

Employment  
Equity: An  
Introductory  
Workshop for  
Trade Unionists  
Organised by the  
COSATU  
Education  
Department

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National Education Officer

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## Employment Equity: An Introductory Workshop for Trade Unionists Organised by the COSATU Education Department

### Introduction

This workshop is designed to give you a reliable introduction to the Employment Equity Act. It is based on hard information and on ACTIVITIES or discussion exercises that will help you to understand how the Act works, who it covers, and what the implications are for trade unionists.

Each of the Activities is complemented with information that will help you to understand the Act in more detail. Sections have been added to help you find further information, and to understand the terms that are used in the Act itself.

In a two day programme, you are not going to be an 'expert' on the Employment Equity Act, but we hope that you will feel more confident about using the Act, especially in ensuring that it is used to address a wide range of discriminatory practices at the workplace.

As with most legislation, the more that you begin to use it, the more its strengths and weaknesses will emerge. It is very important that any weaknesses in the practical application of the Act are reported through your Union to the Federation. This will help the Federation to campaign for improvements in the legislation, and to close any loopholes that allow employers to avoid their responsibilities.

All Labour Legislation, including the new Employment Equity Act should serve as a 'base-line' or minimum standard. Employer and Union observance of the minimum standards as laid down in law should be our starting point. Through collective bargaining and improved Union organisation, we aim to improve upon the standards set by the law, and

increase the protection of our members. This is a real challenge. It is especially important for us all to recognise that as we enter into a period where employers are demanding more 'flexibility', the introduction of a new law to correct the legacy of imbalances left by apartheid at the workplace deserves our special attention. We hope this workshop is the first in a series of educational events that will cover this vital new area.

The main aim of this workshop is to help you to understand the basic workings of the law, and how best it can be implemented. We also hope this programme encourages you to find out more about Employment Equity issues, and contribute positively to the struggle for the eradication of inequality.

This pack is designed for a series of two-day introductory workshops that are being sponsored by COSATU in each region. A workshop of COSATU Educators held in September 1999 helped to assemble the material, and to test its appropriateness. As a result there are a considerable number of educators who can advise, and facilitate this workshop and who can be contacted via COSATU Education Department.

We would also be very interested to hear how the pack has been used, and in particular how it can be improved to meet the needs of trade unionists who want to tackle discrimination using the tool of the Employment Equity Act, as well as other organisational means. If you use this pack, feedback would be most welcome.

Many thanks,

Shele Papane  
National Education Officer  
COSATU

# The Aims of this Pack

## The Aims of this Pack

This pack has been designed to achieve the following:

- To help you to understand the Employment Equity Act and how it can be used to tackle discrimination at the workplace.
- To gain an understanding of how the Act works, and the key areas it is supposed to address.
- To practice preparing for the full implementation of the Employment Equity Act, and to identify a Union approach to it
- To identify where the basic minimum's in the Act can be strengthened through Collective Bargaining.
- To help you begin to prepare your membership and the Union as a whole for implementation of the Act, and where you can get further help and information.

# Model Programme

Below is a Model Programme that we hope regions can use as a basis for their educational activity on the Employment Equity Act. It can be adapted for longer or shorter workshops, and if you need advice please contact your national educator or COSATU.

## Two Day Model Programme

### Day 1

#### Session 1    Introductory Session

This session will help you to get to know everyone else on the workshop, to be clear about what the workshop is hoping to achieve, and to begin to share recent experiences of discrimination and affirmative action..

#### Session 2    Why Employment Equity is a Trade Union Issue

This session will help you to explore the thinking behind the Employment Equity Act, and to think through what a Union approach to discrimination and affirmative action should be. It will also help participants to begin to clarify their arguments in favour of an effective employment equity policy at work.

#### Session 3    Understanding the Basics

This session will help you to discover the main areas covered by the Act, how it is to be implemented, and to begin to think about the implications for Unions.

#### Session 4    Getting to Grips with Discrimination.

This session will help you to understand how the Act might work in practise, and through a typical case study, provide you with an opportunity to understand key definitions used in the Act, and how as a union representative you can best approach the issue.

At the end of the day, you will be given an **Overnight Activity** to complete to help consolidate your learnings of today, and to prepare for Day Two.



## Day Two

### **Session 5 Affirmative Action.**

This session will help you to understand the main definitions, and especially what is meant by affirmative action. It will help you to think about how to explain these definitions to your members.

### **Session 6 The Duties on Employers, and Unions.**

This session will help you to understand the duties that the law places on both Employers and Unions. It will also help you to identify what the concerns of the employers are in relation to Employment Equity, and introduce to you to the idea of an Employment Equity Plan.

### **Session 7 The Next Steps**

This session will help you to identify the continuing concerns of the employers and Unions on Employment Equity issues, and how these might be raised in your own workplace. It will also help you to identify how best your Union and Federation can support you and others in making sure that we tackle inequalities effectively.

### **Session 8 Workshop Evaluation**

This session will help to give the Federation and your facilitator's feedback on the workshop, and will help to improve it for other participants. Many thanks.

## Activity 1

### Introductory Session

#### Aims

To help us to

- Get to know everyone else on the workshop.
- Be clear about what we want to try and achieve over the next two days.
- Share recent experiences of discrimination at the workplace.

#### Task

You will be placed in a small group with comrades that you do not know very well.

Elect a reporter to take a few notes, and then undertake the following:

1. Introduce yourselves to one another giving your union, workplace and job, position in the Union, and why you have come to this workshop.
2. Look at the Aims and the Programme for the Workshop. Are they clear? Do you need any clarifications? Are they relevant to your needs?
3. Share any recent experiences you have had of discrimination or affirmative action in your workplace. Make a note of them. Choose ONE that you would like to share with the rest of the workshop and be ready to describe it.

## ACTIVITY 2      Why Employment Equity is a Key Trade Union Issue

#### AIMS

To help us to:

- Examine some of the prevailing attitudes about discrimination and how best it can be tackled.

- Think through what a trade union approach to addressing inequality should be.
- Familiarise ourselves with the thinking behind the Employment Equity Act.

## TASK

In your group, look at the statements and questions below, and note down what your group thinks about them.

### Challenging Attitudes:

1. There will always be discrimination. Its natural and it will always exist, even though we now have a government that is opposed to it.
2. The issue of sexual orientation is a side issue for trade unionists. We should concentrate on the big issues, job creation, and wages and job security.

### Understanding the EEA:

3. Read through the notes on how the Act came into being. (Where Does the Employment Equity Act come from)? How would you explain this to your members? Make a few key points to share with the rest of the workshop.
4. Are there any terms or words that are unfamiliar to you? Make a note and add them to the Jargon Chart.

Elect a reporter.

## Where does the Employment Equity Act (EEA) come from?

- Constitution set our rights in the Bill of Rights to the fleshed out in legislation - see s. 9 , especially s. 9 (2) on equality
- The new Department of Labour in 1994 issued a five year plan for reforming labour legislation and institutions
- Part of this plan included the issuing of a Green Paper on Employment Equity.
- A reference group including representative of interested groups like Disabled Person of SA met at interval to make comments.
- Some of the issues included:
  - Targets vs quotas,
  - Monitoring of arbitrary actions,
  - Recruitment,
  - The need for a flexible or prescriptive law,
  - Who could benefit and should there be a rating of who is the most disadvantages,
  - Fines, penalties and monitoring,
  - Threshold to apply affirmative action, and
  - The need for Code of Good Practice.
- A draft Act or Bill on 1 December 1997

- Labour, the government and business debated the Bill in Nedlac from February to May 1998
- In July 1998, the Bill was discussed by the parliamentary portfolio committee on Labour.
- There was a strong call from COSATU to ban wage discrimination, in other words:
  - Equal pay for equal work and
  - Wage gaps must close.
 As a result, the income differential clause and the "suitably qualified" definition were added.
- The redrafted Act was passed by parliament and signed by the State President on 12 October 1998
- On 14 May 1999 chapter 4 of the Employment Equity Act (EEA) took effect. This set up the commission for Employment Equity, which began to draft regulation and Codes of Practice.
- On the woman's Day, 9 August 1999, chapter 2 of the EEA took effect. This now covers all areas of unfair discrimination in the workplace, while the Labour Relations Act covers unfair discrimination dismissals.
- The official target for implementing the rest of the EEA is December 1999.
- The Department of Labour and the Commission for Employment Equity are presently drafting Codes of

Good Practice related to the EEA. Potential Codes conclude:

- Code on preparing employment equity plans
  - Code on advertising, recruitment procedures and selection criteria,
  - Code on special measures for the people with disabilities, especially related to benefit schemes,
  - Code on special measures on people with family responsibilities ( workers' responsibilities in relation to their partners, children or family members needing care and support)
- 
- But it seems more likely that Chapter 3 of the EEA on affirmative action measure sand employment equity plans may only come into force in January/February 2000.
- 
- The provisions of the EEA relating to state contracts seem set to come into force in September 2000.

### ACTIVITY 3

### Understanding the Basics

Aims

To help us to:

- Begin to build an understanding of the main provisions of the Employment Equity Act, and familiarise the terms that are used in it.
- Explore how the Act will work in practice, and what the role of Unions is in ensuring that the Act is properly implemented.

## Task

In your group, look at the attached 'What is the Employment Equity Act?' and the Act itself, and try and answer the following points:

- What do you think the Act is aiming to do?
- What different forms of discrimination does the Act seek to address?
- Who are the main players in making sure that the Act is implemented?
- What is the procedure for ensuring that the Act is properly implemented, and especially, what is the role of the Union?

Elect a reporter

## What is the Employment Equity Act?

- Workers have struggled over racism, sexism and other discrimination in the workplace
- The democratically elected government in 1994 drew up a new constitution entrenching rights to equality, human dignity
- We need to recognise that factors including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth should not usually be relevant in the workplace.
- We need to recognise that in workplaces:
  - A worker should not be kept out of a job or fail to be promoted because of one of the factors above.
  - All workers should be treated with respect and dignity.
  - More workers from different backgrounds make for a better workplace.
  - Employers should be prepared to make reasonable changes to jobs or the work environment so everyone can do them.
  - Workplace should reflect the kind of workers who live in that region, in all level and categories of workplace.



- Workers should have access to training through a Sectoral Education and training Authority or the National Skills Authority to achieve the above balance.

#### ACTIVITY 4

#### Getting to Grips with Discrimination

##### Aims

To help us to:

- Analyse a typical problem of discrimination.
- Practice reading and applying the Law.
- Think about how unions respond to cases of discrimination.
- Devise a practical plan of action to deal with a discrimination issue

##### Task

In your small group, carefully read the attached case study on sexual harassment.

1. Refer to the supporting information 'Examples of Sexual Harassment' and the material we have used in previous activities.

2. Go through the case study together and note down what you think are the key facts and issues.
3. Now as the union representative who has been asked to represent Ms Jacobs. Note down the advice that would give her, and the practical steps that you would take to address this issue.
4. Use a chart to make your presentation to the rest of the workshop.  
At the end of the activity read through the section on Sexual Harassment in the Appendix.

## SEXUAL HARASSMENT CASE STUDY

You have to deal with a worker's complaint around sexual harassment.

This complaint comes from one of the union members, Ms Pinkie Jacobs. Ms Jacobs is alleging that she was harassed by her supervisor, Mr Abednego Radebe.

Ms Jacobs says that the previous Friday she was approached in the morning by Mr Radebe as she passed him in the corridor. He greeted her and stopped her. There was nobody else about. He backed her against the wall of the corridor with his body, putting his outstretched hands against the wall on either side of her. He said he would not release her until she agreed to go out with him that Friday night.

When she refused, he stared at her rudely and said: "I see you are still Daddy's little girl". He then walked off and left shaking with fright and embarrassment.

She said that before this incident, Mr Radebe had made her uncomfortable by frequently remarking on her physical appearance and by standing very close to her when she was working or when he was speaking to her.

She said that she had once told him that she was married and that she liked her work and she liked to be treated with respect in the workplace. But she was too shy of Mr Radebe and his authority to complain to him more directly until the incident happened.

She came to the union office and the organiser raised her problem in a meeting with the area manager Mr Will Stevens. He said this was not a serious issue and refused to address the grievance.

### Example of Sexual Harassment

Example of sexual harassment may include the following but are not limited to the listed examples:

#### Verbal Forms

Sexual innuendo, persistence requests for unwanted dates, requests for sexual favours, unwelcome sexual jokes, unwelcome questions about a

person's sex life, comments about a person's body, telephone calls with sexual overtones.

### **Physical Forms**

Fondling, Grabbing or rubbing against someone, unwelcome patting, touching, pinching, strip-search by a member of the opposite sex, exposing one's self, attempted rape or rape.

### **Non-verbal Forms**

Leering whistling, offensive pin-ups or posters, winking, rude gestures.

### **Secondary Harassment**

Secondary harassment occurs when a grievance reports a case of sexual harassment, and other employees then start harassing her/ him because of the grievance filed.

### **Quid Pro Quo Harassment**

Quid pro quo harassment is an abuse of authority by an employer including all levels of management or co-workers who has power or can influence the process of employment, dismissal, promotion, salary increment or any other employment decisions. This can be done by suggestions of sex in return for a job, salary increase or other benefit.

## Overnight Activity    Crosswords or Cross Words!

### Aims

To help you to:

- Further familiarise yourself with the content of the Employment Equity Act.
- Get used to the language used in the legislation.
- Start to tackle legal 'jargon' and make it understandable!

### Task

Working in pairs, small groups or individually (small groups is best!) fill in the Crossword puzzle on Employment Equity which is attached.

In addition to the crossword puzzle, you will be allocated a phrase or term that is used in the EEA or which is on the Jargon Sheet. Find a place where the term is used in the Act (note the page and paragraph number reference), and then describe it in simple, understandable language that members could understand. Put your definition on a card ready for display in the morning. Sleep well!

In the morning we will check the puzzle together, and share our definitions.

## Affirmative action crossword puzzle

### ACROSS

1. The EEA provides in Chapter Three that a person may be -----  
(8) qualified for the job because of their formal qualifications, prior learning, relevant experience or their capacity to acquire, within a reasonable time, the ability to do the job
2. Fair and equal treatment for all at work is the theme of the Employment----- (5) Act (EEA)
3. Disproportionate (too big) ----- (13) in income between different job categories should be made smaller by designated employers under the EEA
4. Actions by employers to ensure equal employment opportunities for groups disadvantaged in the past may be called -----(11) action
5. Affirmative actions measures in equity plan should not make an absolute barriers to the continuity employment of non-designated groups or in other words, force the -----(10) of e.g white men
6. Designated groups under the EEA include people who are black, disabled or -----(5)

### DOWN

1. Affirmative action under the EEA is designed primarily to include people who are black, women or -----(8)
2. The EEA aims to redress the disadvantages suffered by, amongst others, -----(5) people in the Apartheid past.
3. The EEA provides in Chapter Three that a person may be suitably -----  
(9) for the job because of their formal qualifications, prior learning, relevant experience or their capacity to acquire, within a reasonable time, the ability to do the job
4. Affirmative action measures aim to address the workplace problems workers suffer in the present and suffered in the -----(4)

5. All designated employers must submit information on their affirmative action measures to come, to the Department of Labour, in the form of an employment equity -----(4)
6. Affirmative action measures approved by the EEA include preferential treatment and numerical goals but exclude----- (6)

## Activity 5

## Affirmative Action

### Aims

To help you to:

- ☐ Understand what is meant by Affirmative Action
- ☐ Think about the arguments you can use to ensure that Affirmative Action is taken up properly by the employer.
- ☐ Identify the range of Affirmative Action measures available.
- ☐ Think through how Unions can organise for Affirmative Action Measures.

### Task

In your group you will be given one or more of the following cases. Using your knowledge of the Act so far, and the notes in their appendix 'Affirmative Action in the Employment Equity Act' and 'Unfair Discrimination in the Employment Equity Act, decide what possible

**Affirmative Action Measures**, if any, could be taken to tackle these cases.

In addition, briefly describe what the Union can do to encourage the employer to respond positively.

Elect a reporter



## ACTIVITY 6

## The Duties on Employers and Unions

### Aims

To help you to:

- Be clear about the role of the employer in implementing the provisions of the EEA
- Identify the role of the union in tackling inequalities at the workplace, and begin to understand what an Employment Equity Plan is.

### Task

In your group, using the information we have already looked at, and the 'The Features of an Employment Equity Plan in the appendix, note down what you think about the following:

### The Right to be Consulted

1. Does an employer have to consult the Union on Employment Equity? How and when? What can be done if the employer refuses to consult? What happens if not all the workers are members of the Union or are in different unions?
2. How are Affirmative Action Measures assessed to check if they are working? What can unions do to monitor progress?
3. Can an employer refuse to give you information relating to Employment Equity? What is the legal position on the disclosure of information?

### Towards an Employment Equity Plan

4. How would you explain what an Employment Equity Plan (EEP) is to workers?
5. Who is responsible for drawing up an Employment Equity Plan and how can Unions influence the process?
6. Given the guidelines on drawing up an EE Plan, what do you think are the most important areas to include for workers?

1. Think about your own workplace, or the sectors you cover, and identify any concerns that have already been raised or are likely to be raised by the employer. What arguments can you use to respond to your employers concerns?
2. Note down any suggestions for making sure that your Union and Federation are able to give on going and longer term practical support to Union representatives on Employment Equity.

Elect a reporter.

## ACTIVITY 8

## Workshop Evaluation

### Aims

To help us to:

- Identify the usefulness of this workshop and how it might be improved.
- Evaluate the way the workshop was structured and conducted.

### Task

In your group,

1. Look back at the Aims and the Programme of the Workshop. Have the Aims been met? Please explain. Was the programme manageable?
2. Which parts of the programme did you think were useful, and which less so? Please be frank.
3. Please comment on the organisation of the workshop, and the educational methods used to facilitate it.
4. How do you think the workshop could have been improved?
5. Any other comments? Many thanks.

# WORKERS' GLOSSARY ON EMPLOYMENT EQUITY

## Introduction to the Workers Glossary

This Workers Glossary has been written to help you to understand a range of the terms used in the Employment Equity Act, and also in the Skills Development Act. It is divided up into three sections covering **Unfair Discrimination**, **Affirmative Action**, and the beginnings of a Workers Glossary of terms used in the **Skills Development Act**. It is hoped that as you work through the workshop programme you will be able to refer to the terms that are most often used in the section you are dealing with. Although we are not covering in detail the Skills Development Act, it is closely linked to the Employment Equity Act, and so familiarising yourself with the terms used in the SDA should help at a later stage.

Please feel free to add to the Glossary if you develop or find a useful definition yourself, and pass it on to your Federation for inclusion in this list. Thanks.

### UNFAIR DISCRIMINATION

- **Belief** - a system of acceptance without proof, involving traditions, religion, customs or culture, e.g. to shave one's head during a mourning period
- **Birth** - refers to the place, region or country where a worker was born, e.g. the EEA forbids discrimination against a worker born in Nigeria, on the basis that the person was born in Nigeria
- **CCMA** - the Commission for Conciliation, Mediation, and Arbitration which attempts to settle and if this is not successful, later rules on the majority of labour disputes (others go on to the Labour Court) [*as set up by s. 112 of the Labour Relations Act no. 66 of 1995*]
- **Collective agreement** - a written agreement between two or more parties, including an employer or group of organised employers and one or more registered trade unions that regulates one or more aspects of the relationship between the parties [*see s.1 of the EEA*]
- **Colour** - an arbitrary and unscientific term suggesting that people with different skin "colour" or hair or eyes etc linked to family descent are

somehow different in any way other than through their historical experience, e.g. people who are "black" or "white"

- **Conscience** - state of awareness with the capability to act rightly or wrongly. Discrimination against someone who is taking a stand according to their own personal conscience is not acceptable, e.g. taking disciplinary action against a union legal officer who refused to defend a member charged with rape may be forcing them to act against their conscience.
- **Direct unfair discrimination** - is an evident or clear discrimination in terms of gender, colour, creed or sexual orientation etc e.g. gays are not allowed to become union members
- **Ethnic or social origin** - Discrimination against a worker because of where they come from, or what class they are, is not acceptable; unless this is affirmative action or based on the requirements of the job, e.g. it would not be unfair to choose Chinese man above a black woman for a manager in a Taiwanese firm if the firm receives a large volume of documents written in Chinese
- **Family responsibility** - is that kind of support given by workers to their immediate family members who need care or support, that is, their spouse, partner, dependent children and other members of their immediate family, e.g. taking time off to deal with deaths, child care, birth, adoption [*see s.1 of EEA*]
- **Gender** - refers to the different behaviour expected from women and men in society e.g. women wear skirts and do most of the household cooking and men wear trousers and fix the car
- **Harassment** - is a form of discrimination or victimisation meted out to individuals or groups by those with power; it means annoying, troubling or making repeated attacks on people. This could be interpreted as including, for instance, racist or sexist speech. Other examples of harassment would be sexual harassment, or the harassment of a woman on the basis that she is pregnant. [*see s. 6(3) of the EEA and Code of Good Practice on the Handling of Sexual Harassment Cases, general notice 1367 in Government Gazette 19049 of 17 July 1998*]

- **HIV status** - determining whether or not the Human Immunodeficiency Virus has entered a person's body, meaning that they could live for some considerable time before they suffer from the fatal Acquired Immuno Deficiency Syndrome (AIDS) *[see s.1 and s. 6 and 7 of the EEA]*
- **Indirect unfair discrimination** - a hidden or subtle discrimination, not as evident as direct discrimination. This occurs where "criteria, conditions or policies are applied which appear to be neutral, but which adversely affect a disproportionate number of a certain ... group in circumstances where they are not justifiable..." For example, a supermarket chain which only offers a pension after a certain number of years of full time work, is discriminatory against part-time workers. As most of the part-time workers are women, and this provision is indirectly discriminatory against women.
- **Language** - a common tongue used as a medium of communication between two people. Using the same language promotes relationships and interaction. Being able to use your own language helps someone to express herself. For example, speaking Chirwa as a Malawian person should not be a reason for being victimised in a workplace
- **Marital status** - this used to be a test of whether people were legally married or not. Now SA law has begun to recognise life partnerships including same-sex partners ... generally this should not be relevant in the workplace but employers may not discriminate against partners and in favour of legal spouses e.g. a policewoman recently won the right to have her lesbian partner recognised by the provident fund.
- **Medical testing** - is usually done when you are going to be employed, e.g. testing to see whether a worker is HIV+ - this is now strictly forbidden under the EEA unless the employer has an order from the Labour Court *[see s.1 and s.7 of the EEA - note that this "testing" could be indirect, e.g. asking whether a worker has been refused for an insurance policy that provides disability cover relating to certain illnesses]*
- **Political opinion** - one of the opinions held by a member of the community on a burning issue in a community; could reflect the understanding of a whole grouping in a community on an issue about

- **Black people** - before 1994 in South Africa, means all people who do not have a "white" skin colour and includes so-called Africans, Coloureds and Indians *[see s.1 of the EEA]*
- **Commission for Employment Equity** - is a commission appointed by the Minister of Labour to hold office on a part-time basis. It consists of representatives from labour, business, the government, communities and development organisations *[see Chapter IV of the EEA and the attached list of short CV's of the current CEE]*
- **Designated employer** - A "designated employer" includes an employer with 50 or more workers, an employer with a high turnover (see schedule 4 at the back of the EEA), a municipality, an "organ of state", including any state department or provincial and national administration, local government department or administration, any person or institution functioning according to the national or provincial constitution, any person or institution exercising a public power (except a court or a judicial officer), and an employer who agrees, in a collective agreement, to become a "designated employer" *[see s.1 of the EEA]*
- **Designated groups** - black people, women (any race) and people with disabilities (any race); that is, people who were disadvantaged in the past *[see s.1 of the EEA]*
- **Employment equity plan** - a plan to achieve a fair and equal environment in the workplace e.g. the promotion of a black "tea lady" to the position of wages clerk and receiving the necessary training and support for her to succeed *[s.20(1) and (2) of the EEA ... a plan to achieve "equitable representation of suitably qualified people from designated groups within each occupational category and level in the workforce"]*
- **Employment policy or practice** - policy and practice in a workplace that guides and defines how a person is recruited, advertised for and selected for a job, appointed, how their job is classified and graded, how they are paid, what benefits they get and other terms and conditions of employment, what work they are assigned to do, the working environment, workplace facilities, training, development, performance evaluation systems, promotion, transfer, demotion, disciplinary measures, dismissals and others *[see s.1 of the EEA]*



- **Formal equality** - Equal treatment for all individuals no matter what their circumstances are, e.g. saying that men and women will be promoted on the basis of how many hours overtime they work, regardless of family responsibilities
- **Income differential** - the wage gap, or the anomalies between one group of workers' income and another group, e.g. between the wages of artisans and the wages of trained operators, or the differences between the wages of supervisors in different departments [*see s.27 of the EEA*]
- **People with disabilities** - people who have long-term mental or physical damage which makes it definitely more difficult for them to get a job or to get promotion [*see s. 1 of the EEA*]
- **Reasonable accommodation** - means changing a job or a workplace or facilities or processes so that it will be easier for a black, woman or person with disabilities to get a job or get promotion e.g. making a ramp so that someone with a wheelchair will be able to get up the stairs by themselves and reorganising an office so that the person can work in it [*see s. 1 of the EEA*]
- **Substantive equality** - A positive recognition of the need to redress past disadvantages by the redistribution of social and economic power and the provision of opportunities for each worker to develop themselves to their full creative potential, e.g. making sure that black women clerks in a company get proper training to ensure that they are able to be promoted to the same higher-paid positions as white women may presently occupy, because the white women had easier access to training in the past [*see how this is different from "formal equality" above*]
- **Suitably qualified person** - a person who should get a job because she has formal qualifications, or because she has done this job before, or because she has done a similar job before, or because she will be able to learn to do the job within a reasonable space of time [*see s.20(3) of the EEA*]

Workers Glossary of definitions used in the Skills Development Act (SDA)

- **Employment services/Labour centres** - it is a service centre that renders services to job seekers and students in the community for career orientation, advising about job opportunities and offering training. For example, the labour centres run by the Department of Labour can refer community members to training centres to learn skills like brick-laying, cooking and so on. These centres also keep data about vacancies and provide names of workers to companies who are recruiting or advise companies who are retrenching about developing social plans [*see s.1 of the EEA and ss.23-26 of the EEA*]
- **Learnership** - replaces the apprentice system. A learnership must have systematic training, include practical work experience, lead to a recognised SAQA-linked qualification and be registered with the Department of Labour [*see sections 16 to 19 of the SDA*]
- **National Skills Authority** - a body in charge of skills development implementation. It consists of organised labour, business, community development, the state, educators, employment agencies, designated groups and someone from SAQA (see below). It must advise the Department of Labour, help to target and finance key groups for skills development and link with the Sectoral Education and Training Authorities [*see s.4 of the SDA*]
- **National skills development policy** - a plan of action for the development of skills in South Africa, developed by the Department of Labour on the advice of the National Skills Authority [*see s.5 of the SDA*]
- **National skills development strategy** - the way the above plan of action would be undertaken [*see above and s.5 of the SDA*]
- **National Skills Fund** - collect money (levy) from all employers to finance the work of the National Skills Authority (see above). The national skills fund collects 20% of the levy from employers where there is a Sectoral Education and Training Authority or SETA, and all of the levy for employers who do not fall under a SETA. [*see sections 27 to 30 of the SDA*]
- **Sector skills plan** - plan to develop the range of skills needed by learners and workers in workplaces in a certain sector, and outlining targets for such a plan [*see section 10(1)(a) and (b) of the SDA*]

- **SETA** - is a Sector Education and Training Authority, to be established in agreed sectors by unions and employers to develop a sector skills development plan, monitoring workplace training, allocating grants to employers for training, collecting levies from employers, and promoting learnerships *[see sections 9-15 of the SDA, especially s.9(1)]*
- **Skills development levy** - is a levy that is paid for skills development programmes and the administration of a SETA (see below). This levy is paid by employers. For most employers, it will be first 0,5% of the employer's payroll (from 1 April 2000), then 1% of the employer's payroll (from 1 April 2001) *[see s.3 of the Skills Development Levies Act]*.
- **Skills Development Planning Unit** - a department or section of the Department of Labour to look at the skills needs of workplaces or sectors or national priorities *[see section 22 of the SDA]*
- **Skills programme** - is a training programme designed to train employed workers, or the working class more broadly, on skills they would be expected to perform at work. The programme could also be to train workers to be able to perform the jobs that they are doing, better. On completion of such a programme, a nationally recognised certificate is issued *[see sections 20 and 21 of the SDA]*
- **South African Qualifications Authority** - means the national education body set up to link education and training standards to a national qualifications framework, to make it easier for workers to move jobs and get recognition for previous experience *[see s.3 of the SA Qualifications Authority Act no 58 of 1995]*

## Who must implement affirmative action?

The Employment Equity Act (EEA) says that a "designated employer" must make an affirmative action plan in their workplace.

A "designated employer" includes:

- An employer with 50 or more workers
- An employer with a high turnover  
( see schedule at the back of EEA)
- A municipality
- An "organ of state", including
- Any state department or administration  
- provincial and national
- Local government department or administration
- Any person or institution exercising a public power
- ( except a court or a judicial officer)

- an employer who agrees, on a collective agreement, to become a "designated employer"

### Who is affirmative action for?

The EEA says affirmative action is for "designated groups".

So far the EEA defines "designated groups" as:

- black people ( including Africans, "coloureds" and "Indians" )
- women
- people with disabilities:
  - long term or recurring
  - mental or physical impairment (damage or weakening)
- which limits their prospects of jobs or promotion

### What are affirmative action measures?

1. Measures designed to ensure:

- Equal job opportunities for
  - People from designated groups

- Who are "suitably qualified" due to
  - Formal qualifications
  - Prior learning
  - Relevant experience
  - Capacity to learn/ become able to do the job, within a reasonable time
- **Equitable representation in all job categories/**  
 Levels for:
  - People from designated groups
  - Who are "suitably qualified" due to
    - Formal qualifications
    - Prior learning
    - Relevant experience
    - Capacity to learn/ become able to do the job, within a reasonable time

2. Measures to **retain and develop people from designated groups:**

- Including appropriate training
- Especial using the new Skills Development Act

NB - These above measures:

- **Include numerical goals**
- **Include preferential treatment**
- **Exclude quotas**

- Exclude " absolute barriers" to non-designated groups

3. Measures to make "reasonable accommodation", defined as:

- Modification or adjustment,
- To a job or to be working environment,
- To enable someone from a designated group,
- To have access to, participate in or advance in, employment

4. Measures to identify and remove barriers to employment of blacks, women and people with disabilities ( including unfair discrimination)

5. Measures to make workplaces more diverse, because all people deserve equal respect and dignity

**How will the success of affirmative action measures be assessed?**

Compliance by an employer with the EEA will be measured by relating that workplace to the:

- Demography of that region, or nationally  
(demography = statistics on people in communities)

- Pool of suitably qualified people available, from which employer could be reasonably expected to draw,

e.g labour pool in that sector or region

- Economic and financial factors relevant to the sector

e.g mental sector is 80:20 men: women  
and mining sector ratio is worse, so  
what is reasonable progress?

- Present and anticipated economic and financial circumstances of the employer
- Vacancies in different categories and levels and labour turnover
- Progress compared to similar companies in the same sector
- Reasonable efforts in dealing with unfair discrimination  
("eliminating employment barriers")
- Any other factor

**Who must a designated employer consult?**

- Consult with workers, including:



- workers in all job categories and levels,
- designated workers, and
- non-designated workers
- If there is a representative trade union, the employer will consult with the union and shop stewards in the workplace, provided that the union represents all the types of workers listed above
- If there is no representative union, or the union does not cover all the types of workers listed above, the employer must consult with representative chosen by the unorganised workers

### **The designated employer must consult workers on:**

1. How to prepared a workplace analysis including:
  - Employer barriers for designated groups, looking at factors including recruitment, selection, job grading, pay and benefits, training + development, promotions, demotions, transfers, workplace + facilities
  - Skills profile for all job categories and levels, to check where blacks, women and people with disabilities are not well represented
2. Preparing and implementing an employment equity plan for the workplace

3. Reporting on the employment equity plan to the  
Department of  
Labour

## STEPS TOWARDS AN EMPLOYMENT EQUITY PLAN

1. Discuss with the shop stewards committee/ trade representative in a workplace:
  - what affirmative action means and
  - what affirmative measures are suggested in the Employment Equity Act (EEA) S. 55 and
  - what process the EEA for an employment equity plan.
2. Find out what the union policy is on these issues. Plan how to get a mandate from workers on these issues.
3. Check whether you employer is a "designated employer"; or negotiate from you employer to volunteer to become a designated employer.
4. Set a date for employer to consult with the shop stewards committee and a union organiser on affirmative action in the workplace.
5. Prepare this meeting with the management by getting together proposals on:

- how to conduct the workplace analysis;
- what demands the union has to go into the employment equity plan; and
- how the union will monitor the employer's progress report to the Department of Labour.

6. To do the analysis, the employer must collect the information on:

- employment policies ( e.g only matriculants),
- employment practices ( e.g no night shift work for a women),
- employment procedures ( e.g white male HR does all interviews),
- the working environment ( e.g are there protective screens screens on the VDU terminals?) and
- a profile of each job category ( and all levels on each categories) explaining how many black, women and disabled workers are in each category and level.

The union needs to have demands on how they will monitor and intervene in this process of collecting information and analysing it. The employer must consult with the union on this.

7. An employment equity plan must cover the following items. The union needs a mandate for negotiating each one:

- affirmative action measures including
  - Eliminating unfair discrimination against blacks, women and the disabled.
  - Promoting diversity based on equal dignity and

respect for all workers,

- moving towards equal opportunities and equitable representation for blacks, women and the disabled,
- retaining and developing women, blacks and disabled (including skills development),
- provided that there are no quotas and no absolute bars against able white men ( people not from designated groups);

- the objective for each year of the plan;
- the numerical goals for affirmative action and a timetable

and a strategy in each category (e.g 5 women out of ten workers in the dispatch department, after a suitable training and filling the vacancies left as workers leave);

- other plans ( other the above; for example, desegregating the canteen) and a timetable for them;
- how long the plan will take ( must be between one and five years);
- how the plan will be carried out and monitored;
- internal procedures to resolve the disputes about understanding the plan or putting it into practice;
- who in the workforce will be responsible for monitoring and implementing the plan.

The union needs to have its demands ready on each of these items, or to propose a process for working on these items. The employer must consult with the union on this.

8. The EEA sets out a timetable for reporting to the Department of Labour on this plan and how it is going. Such reports are public documents. The time within which an employer must do this depends on the size of workplace. An employer with a workforce or less than 150 workers must get its first report to the Department of Labour within 12

months of the date when the EEA commences and then report again at least by the beginning of October every two years after that.

The employer must consult the union about this report before they submit it to the Department of Labour. So the union must have its demands ready.

### **General duty of employer on unfair discrimination:**

- The employer must:
  - take steps to provide equal opportunity,
  - by eliminating unfair discrimination,
  - in any employment policy or practice.
- An employment policy or practice includes:
  - Recruitment procedures, advertising and selection criteria,
  - Appointments and the appointments process,
  - Job classification and grading,
  - Remuneration, employment benefits and terms and Conditions of employment,
  - Job assignments,
  - The working environment and facilities,
  - Training and development,
  - Performance and evaluation systems,
  - Promotion,

- Transfer,
- Demotion,
- Disciplinary measures other than dismissal, and
- Dismissal.

### Types of unfair discrimination:

#### • DIRECT DISCRIMINATION-

This is when an employer treats a worker or a group of workers differently because of some characteristic or choice that is not related to the workplace.

This can include:

- race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

This can also include other forms of discrimination where the employer's action is arbitrary.

#### • INDIRECT DISCRIMINATION-

This is when an employer applies criteria, conditions or policies which appear to be Neutral, but which adversely affects a disproportional number of a certain group in circumstances where they are not justifiable.

- For example, if an employer says any applicant for a job as a factory general assistant, doing cleaning

and maintenance, must have a Matric certificate, this seems to be neutral. But such a requirement will adversely affect more black workers because of their previous unequal access to better quality education. And it would be hard for an employer to justify the need for a general assistant to have a Matric certificate.

### **Unfair discrimination includes harassment:**

- Harassment of a worker is a form of unfair discrimination. This can involve troubling, annoying or making repeated attacks on a worker.
- Employers and their workers should respect one another's integrity, dignity, privacy and right to equity in the workplace.
- A worker may not be harassed on any of the grounds below, or any combination of these grounds:
  - race,
  - gender,
  - sex,
  - pregnancy.
  - Marital status,
  - family responsibility,
  - ethnic or social origin,
  - colour,
  - sexual orientation,
  - age,
  - disability,

- religion,
- HIV status,
- conscience,
- belief,
- political opinion,
- culture,
- language and
- birth.

Who is affected by what the EEA says about unfair discrimination?

- The Employment Equity Act (EEA) talks about:
  - an employer,
  - an employee, or any person who:
    - is not an independent contractor,
    - who works for another person, or the state (remember "person" can include companies, close corporations, organisations etc with legal personality),
    - who receives or is entitled to receive remuneration (money usually, or shares or benefits like housing),
    - who assists in the employer's business.
  - A job applicant (s. 9 of the EEA).



The NEDLAC Code on sexual harassment goes wider.  
It includes:

- Owners, employers, managers, supervisors, employees, job applicants, clients, suppliers, contractors, and others having dealings with the business/ workplace.

A trade union could negotiate to include others like those above in any grievance procedure or procedure on unfair discrimination through a collective agreement.

**When can discrimination be "fair"?**

The employment Equity Act (EEA) gives two possibilities.

- Affirmative action measures do not amount to unfair discrimination

In other words, measures to address the injustices and inequalities of the past for groups of people, are not giving them unfair advantages.

- Choosing, excluding or making differences between people at work because of a job's "inherent requirement" do not amount to unfair discrimination

For example, only an attorney who is admitted to practice may sign certain court papers on behalf of clients. This would be an "inherent requirement" for a litigation job in a legal practice.

When does testing workers amount to unfair discrimination?

## MEDICAL TESTING

THE EEA BANS MEDICAL TESTING OF WORKERS UNLESS:

- A law requires workers in a workplace to be tested, e.g recruits to the army , or
- The employer can show that testing is justifiable because of:
  - Medical facts,
  - Employment conditions,
  - Social policy,
  - fair distribution of employee benefits, or the
  - Inherent requirements of the job.

HIV testing:

An employer may not test any worker for HIV unless s/he gets an order from the Labour Court that such a test is justifiable.

The Labour Court will look at the factors above.

The Labour Court may make conditions for such test, for example:

- Employers must provide counselling,
- The test and result must be confidential,
- The time period for such tests may be limited,

- The categories of workers who may be tested, may be limited,

- **PSYCHOLOGICAL TESTING**

The EEA bans psychological testing or psychological assessments of a Worker,

Unless:

- The test is scientifically valid and reliable,
- The test does not discriminate against some workers and can be applied fairly to all workers,
- The test is not biased against any worker or group.

The procedure for making an unfair discrimination dispute:

- **DISMISSAL DISPUTES**
  - Referral to the CCMA or Bargaining Council for conciliation, within 30 days of the dismissal
  - If conciliation does not succeed, referral to the Labour Court for adjudication
  - If both parties agrees, the dispute could be referred to arbitration
- **OTHER DISPUTES**

- The union or worker referring a dispute must show that they made a reasonable attempt to settle it first
- If this fails, the dispute may be referred to the CCMA for conciliation. This must be done within six months of the act, or failure to act, that constituted the unfair discrimination
- If conciliation does not succeed, referral to the Labour Court for adjudication
- If all parties agree, the dispute could be referred to arbitration

Pitfalls and potential gains for unions around the Employment Equity Act (EEA), especially around employment equity plans

ISSUES	UNIONS	EMPLOYERS
NEED TO CHANGE	<ul style="list-style-type: none"> <li>• Unions have always struggling against racism and discrimination; more recently, most unions have pushed for gains for women</li> <li>• Unions need more internal education on sexism, discrimination against people with disabilities etc</li> </ul>	<ul style="list-style-type: none"> <li>• Employers do not selecting, promote</li> </ul>
DESIGNATED EMPLOYERS	<ul style="list-style-type: none"> <li>• Some unions are calling on all companies in their sector to agree to become "designated employers"</li> <li>• Unions may need to do research on some companies to determine their actual structure and turnover, considering off-shore assets etc to assess whether employers fall within the turnover thresholds in the EEA's Schedule 4</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are out-sourcing, leading to turnover, to</li> <li>• Some large employers way to unleash Skills Development</li> </ul>

TIME PERIOD FOR CHANGE	<ul style="list-style-type: none"> <li>• Unions need to show concrete gains to members</li> <li>• Unions want transformation in workplaces, not only some level of worker participation in decision-making</li> <li>• Unions have been campaigning for a better deal for black workers, and more recently, for women workers and workers with disabilities.</li> <li>• "Reasonable progress" in employment equity should become negotiated agreed point(s) which are practical but constantly advancing</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are targets to be measured against competitive edge</li> <li>• Employers can compromise on training grants</li> <li>• Employers are "progress" to "equality" for people in relation</li> </ul>
PREJUDICE  PRIOR LEARNING  "SUITABLY QUALIFIED"	<ul style="list-style-type: none"> <li>• Unions want an end to discrimination.</li> <li>• Another long-term union demand is the recognition of prior learning and experience, and opportunities for workers to advance or have a "career path".</li> <li>• Unions will need to push for a union-friendly meaning for "suitably qualified" workers; and</li> <li>• be prepared to contest the application and interpretation of "suitably qualified" and other definitions in the Labour Court; and</li> <li>• be prepared to reinforce these in collective agreements</li> </ul>	<ul style="list-style-type: none"> <li>• Employers were blacks, women prejudices behaviour slightly happier employ those who highly contested decision on who hands by section employer must suitably qualified</li> </ul>
RETRENCH  PROMOTIONS	<ul style="list-style-type: none"> <li>• Unions do not have to be concerned about members losing jobs in forced retrenchments to make new spaces</li> <li>• While waiting for jobs to open up, unions can focus on promotions in line with the EEA obligation for employers to "retain and develop" members of designated groups [Eskom case]</li> <li>• Unions should try to protect the positions of all members, especially older ones, under the "retain and develop" provision</li> <li>• Unions should beware of attempts by employers to promote black, women, disabled workers to jobs and then reduce the wages and benefits attached to the same jobs, arguing recession and the need to retrench</li> </ul>	<ul style="list-style-type: none"> <li>• Employers were workers to make</li> <li>• Employers who from designated employing/provisions 15(4) of the Labour Act "an absolute bar to employment of designated groups"</li> <li>• Employers are numerical goals</li> </ul>
PERFORMANCE STANDARDS	<ul style="list-style-type: none"> <li>• Unions need to be aware that some employers will be very tough on performance now, and try to protect members by pushing for full job descriptions and transparent and simpler grading systems</li> </ul>	<ul style="list-style-type: none"> <li>• Employers have if they have to name of integrity be tougher on route in the Labour Act</li> </ul>
MORE ADMINISTRATION	<ul style="list-style-type: none"> <li>• Unions should try to wean employers away from expensive consultants and token EEA appointments towards a joint approach to unleashing creativity</li> <li>• if unions are well-prepared and energetic, this will help employers to see the EEA as more than simply another legally imposed administrative/accounting procedure</li> <li>• Unions should examine the role of "equity officers" employed by management to see that the union is fully involved</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are administrative</li> <li>• Employers are</li> </ul>

<p>AVOIDING UNFAIR DISCRIMINATION</p> <p>CHECK POLICIES AND PRACTICES</p> <p>SEXUAL HARASSMENT POLICY</p> <p>MEDICAL (HIV) AND OTHER TESTING</p> <p>DISPUTE RESOLUTION</p> <p>RECORDS TO FIGHT CASES</p>	<ul style="list-style-type: none"> <li>• Unions should brief shop stewards to check for potential unfair discrimination issues and on how to take up unfair discrimination cases</li> <li>• Unions should look to play a role in negotiating real gains for members as employers do the following to avoid potential unfair discrimination cases: <ul style="list-style-type: none"> <li>• Check employment policies and practices for discrimination,</li> <li>• Analyse workplace recruitment and selection procedures for hidden discrimination,</li> <li>• Set up a company sexual harassment policy,</li> <li>• Employers must justify any medical or psychological testing, (especially HIV testing which they can only do with a Labour Court order) and unions should research and monitor any ground rules established for such tests</li> <li>• Set up a dispute resolution path to look at resolving unfair discrimination cases before they get to the CCMA,</li> <li>• Organise themselves to keep very detailed records on any allegations of unfair discrimination, as the duty to prove that their actions were fair or non-discriminatory will fall on them, after the union has made out a case for unfair discrimination on the face of it</li> </ul> </li> <li>• Unions need to set up a way of keeping their own records to use to challenge employers</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are following prevent discrimination <ul style="list-style-type: none"> <li>• Checking all discrimination</li> <li>• Analysing work for hidden</li> <li>• Setting up</li> <li>• Done their psychological can only do</li> <li>• Setting up unfair discrimination</li> <li>• Organising any allegations prove that will fall on unfair discrimination</li> </ul> </li> </ul>
<p>DEADLINES FOR AFFIRMATIVE ACTION</p>	<ul style="list-style-type: none"> <li>• Unions and employers are under pressure as the affirmative action section of the EEA is likely to come into force in December or early next year</li> <li>• This means that the first reports on an employment equity plan will probably be due between June/July 2000 and December 2000 (depending on the size of the workforce)</li> </ul>	<ul style="list-style-type: none"> <li>• Unions and employers under pressure as the affirmative action section of the EEA is likely to come into force in December or early next year</li> <li>• This means that the first reports on an employment equity plan will probably be due between June/July 2000 and December 2000 (depending on the size of the workforce)</li> </ul>
<p>PREPARATIONS FOR AFFIRMATIVE ACTION BY END OF 1999</p> <p>RESEARCH</p> <p>PROFILE OF WORKFORCE</p>	<ul style="list-style-type: none"> <li>• Unions need to be aware that consultants are suggesting the following to employers, and begin to prepare to put a union position on these issues: <ul style="list-style-type: none"> <li>• Setting up a consultation with unions and other workers,</li> <li>• Researching the statistics on workers in their area and sector, drawing on UNISA and regional technikons, or the HSRC,</li> <li>• Drafting a profile of their workplace(s) covering all job categories and levels (regulations and Codes on this are not out yet),</li> <li>• Appointing a senior manager to manage the employment equity plan (monitoring procedure, disputes, goals etc)</li> <li>• Checking on the new regulations as they come out</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Consultants are suggesting the following to employers, and begin to prepare to put a union position on these issues: <ul style="list-style-type: none"> <li>• Setting up</li> <li>• Researching the statistics on workers in their area and sector, drawing on UNISA and regional technikons, or the HSRC,</li> <li>• Drafting a profile of their workplace(s) covering all job categories and levels (regulations and Codes on this are not out yet),</li> <li>• Appointing a senior manager to manage the employment equity plan (monitoring procedure, disputes, goals etc)</li> <li>• Checking on the new regulations as they come out</li> </ul> </li> </ul>



NEW REGULATIONS AND CODES	(not available yet) on:	<ul style="list-style-type: none"> <li>• Summa</li> <li>• Keeping</li> <li>• Income</li> <li>• Checkin</li> <li>• employ</li> <li>• Other</li> <li>• forms</li> </ul>
EXEMPTIONS	<ul style="list-style-type: none"> <li>• Preparing an analysis (s.19 of the EEA),</li> <li>• An outline for an employment equity plan (s.20),</li> <li>• Reporting to the Dept of Labour (s.21),</li> <li>• Summarising the EEA for display (s.25),</li> <li>• Keeping records (s.26),</li> <li>• Income statements to check for wage gaps (s.27),</li> <li>• Checking for relaxations/exemptions for businesses employing less than 150 workers (s.55),</li> <li>• Other administrative and procedural regulations, forms etc (s.55),</li> <li>• Checking out Codes of Good Practice as they are issued (s.50 (4) - footnote gives list or see summary earlier).</li> </ul>	
CONSULTATION OR NEGOTIATION	<ul style="list-style-type: none"> <li>• Unions are calling on employers to negotiate employment equity plans, not merely "consult" over them</li> <li>• Unions need to intervene and start dealing with management on these issues to pre-empt divisive and greedy consultants</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are</li> </ul>
AFFIRMATIVE ACTION TASKS FOR 2000	<ul style="list-style-type: none"> <li>• If the above tasks are completed in 1999 in workplaces, then the tasks for unions in most workplaces in 2000 will be: <ul style="list-style-type: none"> <li>• Consultation and drafting a workplace analysis, employment equity plan and report,</li> <li>• Preparing the first equity plan,</li> <li>• Preparing the first report for the Department of Labour</li> </ul> </li> <li>• Unions should develop a framework or model agreement for all workplaces inside the union to use</li> </ul>	<ul style="list-style-type: none"> <li>• If the above to the tasks for e</li> <li>• Consultatio employmen</li> <li>• Preparing t</li> <li>• Preparing t</li> </ul>
PENALTIES FOR LACK OF AFFIRMATIVE ACTION	<ul style="list-style-type: none"> <li>• Unions can help the Dept of Labour to monitor employers who do not comply with the EEA, by reporting the lack of compliance to the labour inspectors and assisting the labour inspectors in the process of getting undertakings, compliance orders, review by the Director General of Labour, fines by the Labour Court</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are compliance with These range fr</li> <li>• Only the Le process of issuing com General of</li> <li>• The fines c</li> </ul>
MONITORING	<ul style="list-style-type: none"> <li>• Where the employment equity plan requires a senior manager to monitor it, perhaps unions should call for a joint union/employer monitoring committee instead?</li> <li>• Unions will probably bear the primary practical responsibility for monitoring employment equity plans for the first few years and need to set up mechanisms to achieve this</li> <li>• If unions leave the assessment of "reasonable progress" on employment equity issues in workplaces to</li> </ul>	<ul style="list-style-type: none"> <li>• Employers are monitoring cap to see union ac autonomy in wo</li> </ul>

	employers or to the state, this could become as watered-down as the economic trickle-down theory?	
CREATING NEW JOBS	<ul style="list-style-type: none"> <li>Unions need to monitor all new jobs through shop stewards in the workplace to assess the possibilities for employing a person from a designated group</li> </ul>	<ul style="list-style-type: none"> <li>Some consultation to create addition makes it clear "present and past should lead to..."</li> </ul>
LABOUR POOL DEMOGRAPHIC STATISTICS NUMERICAL GOALS SOCIAL GOALS	<ul style="list-style-type: none"> <li>The EEA requires employers to match their workforce to the numbers of blacks, women and disabled persons in the relevant labour pool ...</li> <li>unions may be demanding that the pool considered should be the biggest possible and get the relevant statistics, and</li> <li>unions will demand that the social composition of the pool should change to accommodate those workers who did not previously have access to those kinds of jobs, e.g. because of job reservation in favour of whites</li> <li>Unions need to push that employment equity means a break with the past. If there are only 20% women in the metal sector, must it stay that way forever? Progress, even if gradual, must be the aim of the EEA; not just saying that "society" prefers this!</li> </ul>	<ul style="list-style-type: none"> <li>Employers are narrow the size match or draw</li> <li>Employers are concentrations restricting the with its preposition "Coloured labour the Western C"</li> <li>Employers are trends in social lack of women obliged to look</li> </ul>
SMALL BUSINESSES	<ul style="list-style-type: none"> <li>Unions aim to use mass power and labour laws to establish a floor of rights so that conditions of organised workers will not be undermined by hungry unorganised workers, and that the value of labour power will be increased</li> <li>Unions want small employers also to be covered by the EEA discrimination protections, affirmative action provisions and other labour laws</li> <li>Unions should monitor this and intervene and respond vigorously to proposals for new laws/amendments</li> </ul>	<ul style="list-style-type: none"> <li>Employers are small businesses under s.55</li> <li>Business believes under 150 workers small concerns</li> </ul>
OUTSOURCING	<ul style="list-style-type: none"> <li>Unions are particularly concerned that more and more big businesses are out-sourcing "non-core" departments or functions where workers lack basic protections and solidarity is hard as the workplaces are so small</li> <li>Unions should call for a moratorium on outsourcing which is intended to free employers from the EEA</li> <li>Unions need to intensify their present campaigns on outsourcing or at least monitor and record changes in the workplace to prepare towards a legal challenge that the employer is seeking to avoid their EEA (and BCEA, LRA) obligations.</li> <li>Where tendering/out-sourcing is taking place - build into collective bargaining that only "affirmed employers" are used</li> </ul>	<ul style="list-style-type: none"> <li>Employers are outsourcing and to change their</li> </ul>
INCOME DIFFERENTIALS	<ul style="list-style-type: none"> <li>Unions have fought for a provision in the EEA to assist in long-running union campaigns in some sectors to</li> </ul>	<ul style="list-style-type: none"> <li>Business is aiming and the obligation</li> </ul>



	<p>reduce wage gaps</p> <ul style="list-style-type: none"> <li>• The EEA has a provision on confidential reporting by employers to the Dept Labour on wages at all levels and job categories, s.27; this includes employers having a plan to reduce any wage gaps</li> <li>• If employers argue that s.27 limits union access to income differential statistics, unions can argue their rights to relevant information under the Labour Relations Act for consultations and bargaining</li> <li>• Wage differentials were linked to job reservation (long outlawed) and now forbidden as a discriminatory policy or practice</li> </ul>	<p>employment eq confidential mc Labour,</p> <ul style="list-style-type: none"> <li>• Business does i unions on any w</li> </ul>
LABOUR COURT JURISDICTION	<ul style="list-style-type: none"> <li>• It seems as if the Labour Court will have exclusive jurisdiction to deal with matters arising from the EEA (except for appeals to the Constitutional Court). The composition of the Labour Court, its leadership and the stances taken by it will thus become very significant to unions.</li> </ul>	<ul style="list-style-type: none"> <li>• Employers have can be inclined implementation</li> </ul>

## SUGGESTED SOLUTION SHEET FOR SEXUAL HARASSMENT CASE

The union could take the following steps to address this as sexual harassment, which is a form of unfair discrimination.

1. If you want to refer any unfair discrimination dispute to the labour dispute resolution bodies, you must be able to show that you have made a "reasonable attempt" to resolve this dispute.

In this case, you could argue that raising the case with the area manager and saying it should be treated as a grievance would have given management and the alleged harasser a chance to respond to the problem and offer to try to resolve it.

2. If there are any agreed procedures in the workplace on harassment or in collective agreement, including a Bargaining Council agreement, you should follow those.

In this case, there is no indication of any company or council agreement or policy.

3. Nedlac has issued a Code of Good Practice on the Handling of Sexual Harassment Cases, published in Government Gazette 19049 of 17 July 1998. This gives general guidelines to follow. It suggest that if a potential dispute is not resolved according to any existing internal procedures, either the worker or any other party involved may refer a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) within 30 days of the "dispute having arisen".

The general procedure for unfair discrimination case is set out more fully in section 10 of the EEA. This suggest that any dispute must referred to the CCMA within 6 months of the act or failure to act that cause a problem.

This referral (the CCMA has a form for this - "7.11" form) should also be brought to attention of the company by registered post, delivering it by hand or faxing/e-mailing a copy. The key is being able to prove

that the union has done so, and when (see section 1 of the EEA on "serve" or "submit").

In this case the union must then refer the dispute to the CCMA within six months of the incident, but also within 30 days of the meeting with the area manager. If not, the union will have to show "good cause" for being late. This means explaining how late the referral is, why it is late and showing the good that you have a good case and it is worth proceeding with the dispute. CCMA commissioners are becoming more strict about this as the workload pressure increase.

4. The CCMA will then try to resolve the dispute by calling both parties to a conciliation meeting. If this meeting is not successful, then the referring party may refer the dispute to the Labour Court within 90 days of the CCMA conciliator's Certification of Outcome.

If both parties agree, then the CCMA may arbitrate this dispute instead of the dispute going to the Labour Court.

In this case, the union would probably try to get the company to agree to go to arbitration if the conciliation fails, as this is simpler and cheaper and (in some regions) faster. If the company will not agree, this matter could go to the Labour Court. To prepare for all of this, the union would look up recent cases and try to work out how the arbitrators and judges would view this case.

5. When you are taking such cases to arbitration or to the Labour Court, the principle in the Code on Sexual Harassment (see point 3. Above ) will help you to know how good your case is.

In this case, sections 3 (Definition of sexual harassment) and 4 (Forms of sexual harassment) and 6 (Policy statements) and 7 ( Procedure) will help you to select and weigh the relevant facts.

6. Another important part of preparing your case, is understanding what you have to prove. Section 11 of the Employment Equity Act explains that the worker has to show that the unfair discrimination happened. Then the employer has to try to show that what happened was fair. If the worker shows that there was discrimination, and the employer

cannot show that the discrimination was fair, then the union will have proved a case of unfair discrimination.

In this case, the worker has show that there was sexual harassment in terms of the Code (see 5. above) and you have no facts for the employer to show that it was fair.

7. A further important part of taking an unfair discrimination is knowing what outcome you want for your case or dispute. Being well prepared on this and looking at all the issues involved for the union, will often help you to win this dispute long before it is necessary to go to arbitration or to the Labour Court.

In this case, you might ask for some form of discipline against Mr Radebe or an undertaking that he will refrain from the unacceptable behaviour or face sanctions. You might also try to negotiate some policy on sexual harassment based on the Code to try to protect your member in future.

## Steps to resolve sexual harassment

### STEP 1

Exhaust all internal grievance and disciplinary procedures. The internal grievance and disciplinary procedures in the collective agreement override the Labour Relations Act.

Workplace that do not have internal grievance and disciplinary procedures in place, grievance have the right to directly contact CCMA. In a situation of a dismissal dispute, the dispute must referred to the CCMA within 30 days of the dismissal.

### STEP 2

If the outcome is not satisfactory, refer the dispute in writing to the Commission for Conciliation, Mediation and Arbitration or bargaining council.

Conciliation will take at CCMA's office, statutory or bargaining councils.

Conciliation must be concluded within 30 days.

After 30 days parties will receive a certificate whether or not the dispute as resolved.

### STEP 3

If the dispute is not resolved at conciliation, it may be referred to the Labour Court.

(Steps to resolve the dispute as published by the Dept. of Labour, Sowetan, November 1996- drawn the Nedlac Code on Sexual Harassment)

Before behavior can be classified as sexual harassment, the following element must be present:

- ☐ the behaviour is unwanted by the recipient
- ☐ the behaviour is of a sexual nature
- ☐ the behaviour is as expressed in verbal, physical or non-verbal ways.

### ADDITIONAL READINGS ON SEXUAL HARASSMENT (From the Sexual Harassment Education Project-SHEP)

What is Sexual Harassment?

Although South Africa women has experience sexual harassment at work for a long time, few cases have made to the labour courts. A common law definition was finally made in 1989 by well-known J v M case, heard in the Industrial Court by the President Officer, Arthur de Kock.

Judge de Kock in his judgement defines sexual harassment as occurring when:

" a woman or man is expected to engage in sexual activity in order to obtain or keep employment or obtain promotion or other favourable working conditions. In its wider view it is, however, any unwanted sexual behaviour or comment which has a negative effect on the recipient.

Conduct which can constitute sexual harassment ranges from innuendo, inappropriate gestures, suggestions or hints of fondling without consent or by force to its worst form, namely rape. It is my opinion also not necessary that the conduct must be repeated. A single act can constitute sexual harassment".

In this ruling judge de Kock captures the notion of sexual harassment as a continuum, ranging from unwanted and offensive comments, through to its most extreme manifestation: sexual assault or rape. He also sets out both a narrow and broad approach to defining sexual harassment.

According to this ruling, there is both a narrow and a broad way of defining sexual harassment:

A narrow view recognises behaviour as sexual harassment when someone is coerced into sexual activity in order to get a job, be promoted, or enjoy favourable working conditions. The narrow view would also recognise sexual assault.

A broad view describes sexual harassment as any unwanted sexual behaviour or comment that negatively affects the recipient.

## **What are the features of an employment equity plan**

- At least one year -> 5 years
- Objectives for each year
- Affirmative action measures
- Changes in number of blacks, women and people with disabilities at all relevant job categories and levels
- Timetable to reach this goals
- Strategies and procedures to implement this goals
- Chose people to monitor the plan and evaluate if progress is reasonable
- Report a prescribe intervals on progress to the Director General of the Department of Labour
- Dispute procedure if there are differences on implementing and interpreting the plan
- Any other issue (as practice develops around the new EEA)

## **Income differential and the EEA**

- When reporting to the Employment Equity Plan, a designated employer must report the levels of wages and benefits in each job category or level.

- Where there is a wage gap, the designated employer must take steps to reduce this over time, including:
  - Through collective bargaining,
  - Through sectoral determinations under the new Basic Condition of Employment Act( replacing former wage determinations for sectors)
  - Through playing a standards set by the Employment Conditions Commission (EEA)
  - Through improving skills of workers using the Skills Development Act
  - Through others measures
- The EEA must research on appropriate differentials between job categories and levels, and advise the Minister of Labour on ways to reduce wage gaps. Information on specific workplace will be confodetial.
- Workers are entitled to disclosure of information by employers to negotiate reducing wage gaps
- Workers have a general right to information under the Labour Relations Act for any consultations needed in terms of the EEA, including consultations about drawing and monitoring an Employment Equity Plan.



## What is the Commission for Employment Equity?

- It consists of part-time representative from labour, bussiness, government and community and development organisations. They sit up to five years.
- This commission is supposed to advise the Minister of Labour on policy, regulations and Codes, following research and public hearing open to all.
- One particular task is advise the Minister on the distribution of the population and reasonable goals to acheve more in each sector.

## Monitoring and enforcement of employment equity plans

- Designated employers must report to the Director General of the Dept of Labour on their EE plan:
  - < 150 workers, the employer reports within 12 months of Chapter 3 of the EEA coming into force (? Jan/ Feb 2001) and thereafter at intervals of 2 years,
  - > 150 workers, the employer reports within 6 months of Chapter 3 of the EEA coming into force (Aug/ Sept 2000) and thereafter at intervals of 1 year.
- Report on employment equity plans is available to employer, employee, Director General of the

## Department of Labour, Commission for Employment Equity

- Workers can:
  - complain to a Labour inspector if there is no EE plan or if there are problem and delays
  - Labour inspector can:
    - inspect/ investigate complaint,
    - discuss with employer and get an undertaking, or
    - issue a compliance order,
    - if the employer still does not comply or even appeal,
    - the Director General can ask the Labour Court to make the compliance order of the Labour Court.
- The Director General of the Department of Labour can:
  - review employment equity plans,
  - make recommendations
  - go to the Labour Court and get an order
- The employer can:
  - Give an undertaking
  - Object to a compliance order
  - Appeal to the Labour Court against a compliance order
- The EEA makes provision for the Department of Labour to review employment equity plans. But as this is unlikely for a few years, the focus will be on

trade unions to complain and investigate and initiate the process to challenge discrimination

## Background to the Skills Development Act

- COSATU/ANC/SACP alliance develops Reconstruction and Development Plan (RDP)
- ANC sets up democratic government in 1994 but unilaterally shift policy to Growth, Employment and Redistribution (GEAR)
- Business and the government agree to focus on economic growth and increased production, also agree this requires a more skilled workforce, more focus on training youth
- Long-term union campaigns for more access to training and promotions, recognition of on-the-job learning/ experience, and affirmative action from below
- Tripartite "social partners" at Nedlac/Parliament pass a package of Skills Development Act and Skills Development Levy Act to boost individual performance, productivity and individual access to jobs
- Challenge for unions is to use this to build organization, and use gains to shift balance of power from capitalist orientation

- Remember to take into account that this challenge occurs in the current period of:
  - tension within the Alliance on policy and expenditure,
  - Worldwide job insecurity, cost-cutting and investment strike not economic growth

### How will the national skills development plan work?

This plan consists of:

- A national skills authority
- A national skills fund
- A skills development planning unit in the department of Labour
- Employment centres set up by the Department of Labour

### Purpose of the Skills Development Act (SDA):

#### FOR WORKERS-

- To encourage workers to learn,
- to better their quality of life, and
- to improve their chances to become self-employed

#### FOR EMPLOYERS-

- to improve productivity and competitiveness,
- to encourage employers to spend more on training and
- to see the workplace as a place for ongoing training

# The COMMISSION FOR EMPLOYMENT EQUITY (CEE)

(Who is who? Abridged CV's drawn from  
Dept of Labour handout)

**Professor Mapule Francis Ramashala**, chairperson of the Commission - prize-winning academic, government consultant, university vice-chancellor at the University of Durban-Westville and TRC commissioner

1. **Mr Karl von Holdt** - co-founder of Adult Literacy Project, editor of the SA Labour Bulletin, NALEDI researcher, board member of the SA Post Office and labour representative on the CEE
2. **Mr Tefo Raditapole** - attorney, IMSSA member, CCMA commissioner, consultant to the International Institute for Democracy and Electoral Assistance (IIDEA), the Electoral Institute of SA and Workplace Solutions and labour representative on the CEE
3. **Dr Frans Barker** - academic, holder of positions at the SA Reserve Bank, SA Breweries, and the Central Economic Advisory Service. He was chairperson of the former National Manpower Commission, before Nedlac replaced it. He is an advisor to the Chamber of Mines, member of the Labour Market Chamber at Nedlac and is a representative for organised business on the CEE
4. **Mr Tom Boya** - has held positions at Ellerines, African Life, Rockoil, and Firechem. He has been Mayor of Daveyton and holds various positions including in NAFCOC, and as chairperson of the Daveyton Adult Centre and of the Northern Province Community College. He is currently managing director of TS Marketing and is a representative for organised business on the CEE
5. **Ms Crecentia Mofokeng** - holder of various certificates, formerly employed by the Urban Training Project and Advance Laundries, is currently Education Co-ordinator for the National Council of Trade Unions (Nactu) and she is a representative nominated by the community constituency of Nedlac
6. **Mr Kgotso Charles Tau** - has a degree and certificate and has worked for the SABC and the Free State Development Corporation where he is currently Public Relations Manager and Corporate Secretary. He has been nominated by the community constituency of Nedlac
7. **Ms Thuli Madonsela** - is an arbitrator, a mediator, was a former researcher and part-time lecturer with the Centre for Applied Legal

Studies (CALS) and is a government consultant. She currently serves in a team responsible for developing equality legislation in compliance with the equality clauses in the Constitution. She is currently Chief Director Transformation and Equality at the Department of Justice.

8. **Mr Meko Ernest Magida** - is an attorney, former project consultant for an engineering firm, former deputy director of the Western Cape Provincial Office of the Department of Labour and currently Director, Equal Opportunities of the national Department of Labour in Pretoria.

# Additional Information on Sexual Harrassment



# Affirmative Action in the Employment Equity Act

Unfair

Discrimination in  
the Employment  
Equity Act

# The Features of an Employment Equity Plan

# Employer and Union Concerns about the Employment Equity Act

# Brief Background to the Skills Development Act

# APPENDIX

# Acknowledgements

Thanks are due to many people for their help in putting this pack together, but special mention must be made of Dan Pretorius of the Centre for Applied Legal Studies, all the educators who participated in the special COSATU Pilot Workshop held in September 1999, the Education Department of COSATU and staff at Ditsela.

Apologies are humbly offered for any oversights. Please don't complain too much, help us improve it!

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TRANSITION

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**C O S A T U**  
**SUMMER SCHOOL 1993**

**NEGOTIATION SKILLS**

**Facilitators' Guide**



## **DAY ONE: CONCEPTS AND EXPERIENCES OF NEGOTIATION**

### **OBJECTIVES**

- \* TO EQUIP PARTICIPANTS WITH  
AN UNDERSTANDING OF WHY  
WE NEGOTIATE**
- \* TO DEVELOP AN  
UNDERSTANDING OF  
WHAT NEGOTIATIONS ARE  
ABOUT**
- \* TO USE THE EXPERIENCE  
OF PARTICIPANTS IN  
DEVELOPING A CONCEPT  
OF NEGOTIATIONS**

**OHP 2**

## Programme Plan

### Day One: Concepts and experiences of Negotiations

Time	Item	Material
8h30	<b>Introduction/Expectations</b>	
	<p><b>Introduction</b> The facilitator and participants introduce themselves - name, affiliate and how long in union</p> <p><b>Expectations</b> Participants to work in pairs - listing expectations of the course - facilitator then writes up and leaves up *facilitator should indicate which of the expectations could be met and which not</p>	Flip chart, koki pens
9h00	<b>Experiences</b>	
	<p>*In pairs participants interview one another giving 1 example of a negative and positive negotiating experience *facilitator to ask for 4 negative and 4 positive - write up and allow some discussion *facilitator then poses question/draw out: What makes a good or successful negotiation * summarise</p>	<p>flip chart</p> <p>see facilitators notes (p 5 )</p>
10h15	<b>TEA</b>	
10H30	<b>Why negotiate?</b>	

	<p>Facilitator prepares participants for a class debate on the following question:  <b>Negotiations is a tool used by bosses to destroy militancy and organisation and co-opt workers and unions into the system.</b>  <b>Yes/No.</b>          *Participants are divided into groups. Groups arguing opposing positions          * Groups select their debating team of four each          *rules and procedures given to the teams          *get adjudicator - outside person          Facilitator summarises the main points arising from debate and opens for general discussion          * Facilitator then poses question: How do we maintain militancy and organisation in the process of negotiations?</p>	<p>Flipchart          see facilitators notes          (p 5)</p>
13h00	<b>LUNCH</b>	
14h00	<b>Types and levels of Bargaining</b>	
14h30	<p>a)Participants break into buzz groups and answer 2 questions:          1. What are the different types of negotiations?          2. What are the different levels of negotiation?          *In plenary participants discuss and agree on the answers          b)discuss/clarify different levels of bargaining and linkages          c)Facilitator then gives participants instructions on the evening class debate which they need to prepare for</p>	<p>see facilitators notes          (p 6)</p> <p>see facilitators notes          (p 6)</p>
15h15	<b>TEA</b>	
15H30	<b>EVALUATION</b>	
	Participants to complete Ponder sheet in their workbooks	see Workbook

# Facilitators Notes

## DAY ONE - CONCEPTS AND EXPERIENCES OF NEGOTIATIONS

### Session on Experiences

What makes a good or successful negotiation?

Some points that should emerge:

1. Achieve objectives/issue
2. Builds Organisation
3. Educates negotiators and members
4. Builds for the future
5. Unites workers
6. Builds militancy and strength of workers
7. Fully involves workers in process

### Session on Why Negotiations?

Debate:

Negotiations is a tool used by bosses to destroy militancy and organisation and coopt workers and unions into the system.

Some points that should emerge:

1. Importance of link between constituency and negotiators (mandates etc)
2. no option but to negotiate as we are not taking over from bosses (at this stage)
3. Negotiations as a mobilising tool - negotiations and mobilisation go together
4. Using negotiations as a platform for further gains
5. Negotiations can educate, build and empower workers

Question:

How do we maintain militancy and organisation in the process of negotiations?

Participants to give concrete ideas which will be written up and agreed on flip chart.

## Session on Types and Levels of Negotiations

### Possible answers

Types of Negotiations	Levels of Negotiations
<b>Political:</b> Bilateral talks Peace Committees CODESA	<b>Plant level</b>
<b>Labour/Business:</b> Wages	<b>Local/Regional level</b>
<b>Negotiation Forums:</b> National Economic Forum Local Govt Forum National Housing Forum National Manpower Commission etc	<b>Company level</b>
<b>Personal/Business life:</b> Buying or selling furniture/car	<b>Corporate Level</b>
<b>Personal/social life:</b> Relationship between people	<b>Industry level</b>
	<b>National level</b>

### Evening Debate: Task

1. Groups to prepare for an inter-class debate on the following topic:

**"Industry bargaining inevitably gives power to the union head offices and disempowers membership, shopstewards and local organisers"**

Class 1 and 3 - argue **for** the proposition  
Class 2 and 4 - argue **against** the proposition

2. Materials to use in preparation:

- \* video on centralised bargaining
- \* LRS notes Choosing the right level for Bargaining

## COSATU SUMMER SCHOOL

### NOTES ON CENTRALISED BARGAINING

#### TYPES OF CENTRALISED BARGAINING

Centralised Bargaining refers to bargaining where more than one bargaining unit comes together to negotiate jointly.

There are many different types of centralised bargaining. The most common ones we deal with are:

*National Bargaining* - this has come to mean those negotiations at a national level between the labour federations and the employers (bi partite) or between labour, capital and the state

(tri partite). A recent example of this kind of centralised bargaining arrangement is the negotiation between Cosatu and Saccala regarding the Charter for Peace, Democracy and Economic Reconstruction. Another example is the agreed upon but not implemented National Economic Negotiations Forum (NENF).

*Corporate Bargaining*- where trade unions negotiate with a large corporation or conglomerate which covers many industries. The negotiations which took place with Barlow Rand, involving mining, metal, chemical, paper, food industries all under Barlow Rand are an example of this type of bargaining.

*Group Bargaining*- where a trade union(s) in an industry negotiate with one holding company which has several subsidiary companies in the same industry. An example is Rennie's in the transport industry.

*Company Bargaining*- where a trade union(s) negotiates with one company which has several establishments. Bargaining between Saccawu and OK Bazaars is an example of Company centralised bargaining.

*Industry Bargaining*- in our fight for centralised bargaining we are usually referring to the fight for Industry Bargaining i.e. bargaining with all companies jointly in one industry. Industry bargaining is however complex and can take different forms:

- \* Definition of industry - an industry can be defined widely or in terms of one sector of an industry e.g. the chemical industry can be all chemical and related operations or it can be sub divided into sectors such as petro chemical, rubber, pharmaceutical etc.
- \* Area of an industry - industry bargaining can be nationally or regionally based
- \* Type of industry bargaining forum - industry bargaining can take place in an industrial council i.e. in terms of the LRA , or a bargaining forum can be set up by agreement between the parties i.e. a non legislated Industry Bargaining Forum.

## **ADVANTAGES OF CENTRALISED BARGAINING IN AN INDUSTRY**

- \* Wage rates and conditions equalised across the whole industry
- \* Wages and conditions extended to all workers in the industry - organised or unorganised
- \* Allows unions to deal with issues other than wages e.g. industry policy, training, grading, wage policy etc.
- \* Frees officials from mundane tasks and allows for work on developmental issues and education
- \* Builds the collective power of workers viz a viz the employers
- \* Helps to build unity and solidarity amongst workers in the industry - promotes the policy of one union one industry.
- \* Builds a national and industry perspective amongst workers and does away with plant chauvinism.
- \* Can assist in development of union structures

## **DISADVANTAGES/PROBLEMS OF CENTRALISED BARGAINING**

- \* Difficult to coordinate central negotiations
  - between unions in the industry
  - within a union
- \* Can destroy union structures - workers come to rely on national structures and stop attending meetings
- \* Issues may be duplicated - central and plant level negotiations
- \* Plants and unions are at different levels of development and have negotiated different conditions and wages. This makes equalisation at industry level difficult and may cause divisions
- \* Worker participation is lessened. Removes the struggle from the shop floor
- \* Difficult to keep workers adequately informed
- \* Difficult to obtain clear mandates
- \* Reporting back is often inadequate e.g. reliance on shop stewards who may not have the skill or may report back in terms of their own interests.
- \* Leadership may develop undue influence and power and misuse their position
- \* Different profit levels of companies and ability to pay may lead to divisions amongst workers and reversion to plant level bargaining.
- \* Geographical differences used by employers to divide.

## CHOOSING THE RIGHT LEVEL FOR BARGAINING

Economic support groups' national seminar  
23 to 26 March 1990

Labour Research Service

Progressive trade unions are now well represented and organised in many sectors of the economy, not just at a few large factories. These unions have recognised that their growth and representation across economic sectors calls for new strategies, especially on the level of bargaining.

The demand for centralised national wage bargaining has been put forward by a number of COSATU unions. Many plant level recognition agreements are still, however, being signed!

We suggest that there are two questions unions need to answer on bargaining levels?

The first is: why should unions be concerned with the level of bargaining?

The second is: what is the right level of bargaining?

Both of these questions are examined below.

### WHY THE CONCERN OVER BARGAINING LEVELS?

In the early 1980s progressive unions were pushing for plant level recognition and bargaining. They did not trust the industrial councils. Unions were concerned that the councils were state created structures to which union representatives would be co-opted and worker control lost.



Some COSATU unions are now represented on industrial councils and are well represented across certain sectors of the economy.

Plant level wage bargaining is now, quite simply, impractical for unions. Union resources are stretched to the limit. Furthermore union growth is held back because organisers spend more time at wage negotiations than organising new factories and training shop stewards.

Plant level wage bargaining can cause divisions among workers. It is possible that higher paid plants would not be prepared to support industrial action by lower paid plants which operate in the same industry. The co-ordination of wage demands between plants is difficult, with some plants making compromises where other plants have not.

The Food & Allied Workers' Union has approximately 600 recognition agreements, about one per 125 members. To provide resources and information for annual wage negotiations at each of these plants and companies is difficult. To ensure that the union's policies, such as on wages, are being applied at all these negotiations is impossible.

Barlow Rand's policy of decentralised plant level bargaining is making it difficult for unions, especially FAWU and PPWAWU, to centralise bargaining.

This is because Barlow Rand companies dominate the food and packaging sectors in South Africa. Barlows is able to apply its policy so that centralised bargaining is impossible. Through this policy Barlow Rand hopes to isolate disputes and strikes at individual plants and thereby keep wages low. Some people argue, however, that in the long term the costs in terms of industrial action could outweigh any benefits to Barlow Rand.

Aside from the practical points, without centralised wage bargaining long term policies on wages are not possible. This will be to the detriment of the whole economy, not just for unions and their members.

## THE RIGHT BARGAINING LEVEL

The bargaining system or level is shaped by three forces: the union, the employer and the government. The following extract examines the bargaining level from the union's position:

"Normally unions try to form the bargaining unit on the broadest possible basis, to approach industry-wide bargaining over the whole competitive area. Exceptions are based on two factors: the extent of the union's organisation and the economic character of the industry. An example of the first is a union that divides an industry with a rival. Here the organisation favors a system covering only its own territory. This is union-wide rather than industry-wide bargaining. The second exception applies in industries that sell their products locally, for example, house building, where it is impossible to conduct national negotiations.

Union goals in industry-wide bargaining are: (1) its own security following acceptance by all employers in the industry; (2) administrative efficiency in negotiating one rather than many contracts; (3) greater bargaining power based on ability to strike all competing firms; and (4) job control throughout the industry to promote uniform wages and working conditions.

Collective Bargaining by EL Warren and I Bernstein, Institute of Industrial Relations University of California.

The right level of bargaining depends on a number of factors. We propose that the two most important factors in deciding on the level of bargaining is: the issue to be negotiated and the economic character of the industry.

### Issue to be negotiated

Unions bargain on a wide variety of issues. Some are substantive and bargained annually. These would include wages and conditions of employment. Other matters negotiated are of a procedural nature and are usually negotiated after the union has been recognised.

Unions are better able to develop and monitor long term policies on wages and conditions of employment when they are bargained on a centralised level.

Pensions, provident funds and other funds should also be negotiated on a centralised level. Economies of scale are created and workers' mobility between plants is enhanced.

It is important for unions to remain well organised on the plant level. A number of issues lend themselves to being negotiated at the plant level. These include, for example, shop steward facilities and productivity bargaining. Disputes and disciplinary procedures are obviously dealt with at plant level.

We therefore suggest that unions bargain on a variety of levels.

#### Economic character of the industry

As already noted, unions are better able to develop and monitor long term policies on wages and conditions of employment when they are bargained on a centralised level.

This does not mean that all wage bargaining should be held on an industry-wide level.

Centralised bargaining can occur on a company level where the company is a monopoly. For example, wage bargaining in the brewing industry is centralised at one company, SA Breweries. In the cement industry the unions should aim for centralised bargaining with the cement cartel, where there are only three cement manufacturers.

Wage bargaining in the building and construction industry lends itself to bargaining on a regional level. Building contractors operate essentially in a local market. The work must be done where it is needed, unlike some kinds of manufacturing which can easily be moved from one city to another. Since their product is not transportable, building contractors are competitive only in the local market area. Unlike in most manufacturing industries production cannot be transferred during strike action by the union.

- Company and regional bargaining would not work at all in the clothing industry. The clothing industry is characterised by many small plants so company bargaining is impractical. Clothing manufacturers are fiercely competitive over a nation-wide market. The industry requires relatively little capital investment and labour costs accounts for a considerable part of the cost of the finished product. A difference of a few cents in labour costs may well make the difference between financial success and bankruptcy for the manufacturer.

Through setting wages on an industry-wide basis, competition between the clothing manufacturers takes place on quality, style etc., not on wages. The individual garment manufacturer knows that granting new benefits to workers will not prove financially ruinous, because his competitors will be granting the same benefits. If SACTWU negotiated separately with each individual manufacturer the result would be sweat shops and it would throw the industry into chaos.

#### One more level - nation-wide

The highest level of centralised bargaining occurs at the national level. Up to now this level has been practically non-existent, at least for progressive trade unions. This is likely to change in the future, however.

Unions could, for example, appoint representatives to the Wage Board and other statutory bodies. The functions of the Wage Board could be expanded in setting minimum wages in the economy.

Sweden has traditionally been regarded as having one of the most centralised bargaining systems. During the 1980s, however, this has largely broken down. The reason for this is difficult to ascertain. Some point to international competitiveness and the large increase in new forms of remuneration which have strengthened the link between company profits and workers' pay.

#### A FINAL NOTE: BARGAINING LEVELS AND RECOGNITION AGREEMENTS

Often unions are forced to bargain at plant level by companies while management is controlling the negotiations from a central level. In the early 1980s unions were often better prepared for negotiations than management. Now the tables have turned.

Companies are now using recognition agreements to tie unions down to plant negotiations and in some cases forcing the union to give up rights which exist in the Labour Relations Act, often unsuspectingly.

Barlow Rand's "model" agreement, for example, defines industrial action more widely than the Labour Relations Act, it requires 60% of workers to vote for strike action, mediation is made compulsory and it sets very tight dates for bargaining so that often strike action is made illegal because of the presence of current wage regulating measures.

Unions now need to consider whether recognition agreements provide any benefits. Where there is an industrial council provision is usually made for stop order facilities. A separate agreement with the company could be reached on just shop steward facilities, for example.

Labour Research Service  
14 March 1990

## NEGOTIATING SKILLS DAYS 2 AND 3

### HOW TO USE THE FACILITATORS GUIDE

1. There is an overall '**Outline of Programme**' after this page. This identifies:
  - Each item on the programme
  - A brief summary of the method to be used for the item
  - The materials you will need
  - The time allocation
2. After that, there are detailed sections for each item; these sections are divided up as follows:
  - A '**What You Do**' section
  - An '**OHT**' section on objectives (not Item 5, Item 11, Item 12 and Item 13)
  - Other material (for some sections)
  - **Checklists** (not Item 1, Item 4, Item 5, Item 7, Item 9, Item 10, Item 11, Item 13)
3. The '**What You Do**' section tells you in detail the method for the item; it gives you step-by-step instructions.
4. The '**OHT**' section contains the objectives; you will also have these on Overhead transparencies, ready to use.
5. The 'other materials' section contains other printed material that you will need (including, in some cases, handouts - where there are handouts, they are clearly marked 'Handout' in the top left hand corner).
6. The '**Checklist**' section gives you sample questions to prompt plenary discussion, plus sample answers.

# COSATU SUMMER SCHOOL 1993

## NEGOTIATING SKILLS DAYS 2 AND 3

### OUTLINE OF PROGRAMME

Item	Method	Materials	Time
1. Introduction of objectives and format of two days.	* Lecture	* What You Do Item 1 * OHT 3 * OHT 4	08.30
2. Preparation and Research	* 'Buzz' for 5 minutes * Brainstorm information needed and sources of information * Hand out and summarise 'Company Profile' and Resource list	* What You Do Item 2 * OHT 5 * Company Info * Info for Negotiations * Company profile * Resource list	08.45

3. Preparation for Negotiations	* Divide into two groups	* What You Do Item 3	09.15
	* Groups to read 'Company Profile' and then prepare mandates (wage demand plus maximum of three demands on conditions for each group)	* OHT 6 & 7 * Company Profile	
	* Two delegates from each group to meet to try to negotiate a single common mandate - wage demand plus maximum of three demands on conditions. The rest of participants must <b>not</b> watch.		10.00
TEA			10.15
	* Negotiators to report back to their constituencies for fresh mandate and elect new negotiators		10.30
	* Negotiators to meet to finalise common mandate; rest of groups to watch. (Facilitator to stop process after 15 mins even if not finished and impose agreement).		10.45
	* Plenary discussion on the process of the negotiators reaching consensus.	* Checklist 1	11.00
	* Plenary discussion on comparing demands to what is known of company	* Checklist 2	11.30
	* Groups elect new negotiators		



4. Tabling the demands	<ul style="list-style-type: none"> <li>* Four negotiators (two from each group) to attend negotiations with management.</li> <li>* Video negotiations for playing back to group later.</li> <li>* Rest of group not to watch; divide into two groups to produce plan of action for possible strike; then two groups to sit together and produce common plan.</li> </ul>	<ul style="list-style-type: none"> <li>* What You Do Item 4</li> <li>* OHT 8 &amp; 9</li> <li>* Instructions to Union Round One</li> <li>* Instructions to Management Round One</li> <li>* Video camera</li> </ul>	12.15
LUNCH			13.00
	* Negotiators to prepare report back		14.00

5. Report back	<ul style="list-style-type: none"> <li>* Divide back into the two groups.</li> <li>* Negotiators to report back to their constituencies; allow questions of clarity but no debate.</li> </ul>	<ul style="list-style-type: none"> <li>* What You Do Item 5</li> </ul>	14.15
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6. Video of negotiations	* Plenary to watch video of negotiations	* What You Do Item 6	14.30
		* Video	
	* Plenary discussion on how video compares with report backs	* OHT 10 & 11	15.15
		* Checklist 3	
	* Plenary discussion on negotiations process	* Checklist 4	15.45
	* Presentation and plenary discussion on plan of action for strike	* Checklist 5	16.30
Evaluation	* Participants to complete Ponder Sheet in workbooks		17.00
7. Prepare fresh mandate	* Prepare mandate for Round Two of negotiations in one group	* What You Do Item 7	08.30
		* OHT 12	
	* Elect new negotiators	* Instructions to Union Round Two	
		* Instructions to management Round Two	
8. Round Two Negotiations	* Conduct Round Two of negotiations	* What You Do Item 8	08.50
	* All participants to watch and then discuss in plenary	* OHT 13	09.50
		* Checklist 6	
TEA			10.35

9. Report back and fresh mandate	<ul style="list-style-type: none"> <li>* Participants to meet as one group</li> <li>* Prepare fresh mandate</li> <li>* Elect new negotiators</li> </ul>	<ul style="list-style-type: none"> <li>* What You Do Item 9</li> <li>* OHT 12</li> <li>* Instructions to Union Round Three</li> <li>* Instructions to Management Round Three</li> </ul>	10.50
10. Reaching agreement	<ul style="list-style-type: none"> <li>* Negotiate to agreement witha all watching</li> </ul>	<ul style="list-style-type: none"> <li>* What You Do Item 10</li> <li>* OHT 14</li> </ul>	11.20
11. Drafting agreement	<ul style="list-style-type: none"> <li>* Break back into two groups</li> <li>* Each group to draft agreement reached</li> <li>* Facilitators also to draft agreement from management's side</li> </ul>	<ul style="list-style-type: none"> <li>* What You Do Item 11</li> <li>* Instructions to Union Drafting agreement</li> <li>* Instructions to Management Drafting agreement</li> </ul>	12.20
LUNCH			13.00

12. Presenting agreements	* Both groups to present agreement on flip chart	*What You Do Item 12	14.00
	* No questions or debate after presentations		
	* One facilitator to present management's draft		
	* Buzzing for three minutes on differences between agreements		
	* Plenary discussion on differences between agreements and how to avoid this problem	* Checklist 7	14.30
	* Plenary discussion on process of final negotiation	* Checklist 8	15.15
13. Summary	* Summary by facilitator	* What You Do Item 13	15.45
14. Evaluation	* Participants to complete Ponder Sheet in Workbooks		16.15

## WHAT YOU DO

### ITEM ONE - GENERAL INTRODUCTION

1. Use OHT 3 to introduce the overall objectives of the 2 days.
2. Use OHT 4 to summarise the steps that the participants will go through during the two days. Emphasise the following:
  - Time will be very tight for the role plays; this is on purpose because in reality in the factories there is little time for mandates, report backs etc. So comrades must be very disciplined when going into groups and coming back to plenary.
  - Almost all participants will get a chance to play the role of a negotiator during the two days; for each round of negotiations the groups will be required to elect new negotiators.
  - The emphasis is on role play because the main purpose of the course is that participants will learn skills of negotiating
  - Many participants already have a lot of experience in negotiating

<b>* Ask how many of the participants have some experience of negotiating</b>
---

The purpose of the course is to build on the skills that they already have.

- The case study used is on wage bargaining in a metal factory; comrades who do other sorts of negotiations or in other sectors should not be concerned; the basic skills are the same for all sorts of negotiations in all sectors.

**NEGOTIATION SKILLS  
DAYS 2 & 3  
OBJECTIVES**

Participants will learn:

1. Skills for negotiations
2. Information required for negotiations
3. Strategies and tactics for negotiations

## **WORKSHOP PLAN NEGOTIATION SKILLS DAYS 2 & 3**

1. Plenary on information for negotiations
2. Group work role play on preparing mandates
3. \* Role play on tabling demands - video'd
  - \* Group work on planning a strike
4. Negotiators report back to groups
5. Watch negotiation video
6. Plenary on negotiation and strike plan
7. Group work on fresh mandate
8. Role play on negotiations
9. Plenary on negotiations role play
10. Group work on fresh mandate
11. Role play on reaching agreement
12. Group work on drafting agreement
13. Plenary on agreements
14. Summary

## WHAT YOU DO

### ITEM TWO - PREPARATION AND RESEARCH

*Time - 30 minutes*

1. Use OHT **5** to explain the objectives of this exercise.
2. Emphasise that this exercise will be done quickly because it is revision - they should all have done a similar exercise before in their Basic Course.
3. Ask the participants to open their workbooks at the page headed "Item Two - Company Information".
4. Read through the page with them.
5. Ask the participants to talk to the comrade next to them and answer the questions on the page. They must make their list in their workbook on the form marked "Company Information".
6. **Allow them only five minutes for this - it is revision.**
7. Take their answers in plenary and write them on a flip chart
8. Give out the hand out marked "Information for Negotiators"; tell them to put the hand out in their files; go through the hand out **briefly** with the participants.



**ITEM TWO  
PREPARATION AND RESEARCH  
OBJECTIVES**

Participants will learn:

1. The importance of doing proper research before entering negotiations
2. What information is necessary before negotiating
3. Where to get information from

## COMPANY INFORMATION

1. You have just taken over organising a company from another organiser who has left the union and joined another company as a personnel officer

2. The only things you know about the company are the following:

<b>Name of company:</b>	Wadeville Metals
<b>Number of workers:</b>	4,000
<b>Number of your union's members</b>	2,250
<b>Bargaining level:</b>	Bargains at plant level (not covered by Industrial Council Agreements on wages and conditions)

## QUESTION

1. List all the information you need in order to be ready to approach the shop stewards and start discussing this year's wage negotiations; do this on the form in your work book.

2. Next to each piece of information, note how and where you expect to get this information

3. After you have done that, list on the same paper all the information you need to get from the shop stewards themselves.

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## INFORMATION FOR NEGOTIATIONS

① INFORMATION	WHERE DO YOU GET IT FROM
OTHER UNIONS	S/S
MIN WAGE	S/S + WORKERS
MANAGEMENT ATTITUDES	S/S
AGREEMENT	S/S <sup>s</sup>
LAST INCREASE	S/S
FINANCIAL REPORT	L.R.S
INFLATION RATE	L.R.S.
LIMIT OF WORKERS MILITANCY	WORKERS / SHOP-STEWARD <sup>s</sup> .
CORRESPONDANCE	FILE
EXPIARY OF AGREEMENT	S/S + FILE
CURRENT CONDITIONS	S/S
INCREASES IN THE INDUSTRY	INDUSTRIAL COUNCIL L.R.S. // REGIONAL, BRANCHES H/O - OFFICE
SUBSIDIARIES	S/S <sup>s</sup> ; H/OFFICE; L.R.S.; TURP
H/OFFICE OF COMPANY	UNION H/O; LETTERHEADS; TURP
SPONSORSHIP	L.R.S. BROCHERS; TV; COMPANY P.R. DEPT.
ALL AGREEMENTS	COMPANY / SHOP-STEWARD <sup>s</sup> .
D/P + G/P	S/S <sup>s</sup>
PRODUCTS	DISPATCH DEPT WORKERS
MARKETS	TURP; L.R.S. BUSINESS DAY
CONDITIONS OF INDUSTRY	
OWNERSHIP	TURP

ACCESS + G/MATERIALS \* → UNITY / NOT COSTLY TO COMPANY / R.A.  
 MAJORITY 50% (25%)

## **WADEVILLE METALS PROFILE OF COMPANY**

### **1. Nature of products**

- 1.1 **Grinding balls** for the mining industry (8,000 tons per month)
- 1.2 **Steel cast products** (800 tons per month)
- 1.3 **Rolled Steel Products** (30,000 tons per month)

### **2. Major markets**

2.1 Grinding balls - entirely for gold mining industry; all domestically consumed (no exports); SA gold industry in decline with many mines closing - the gold mining sector is not likely to recover in the near future.

2.2 Steel cast products - 50% for railways;  
25% for power generation industry  
25% miscellaneous industry

Today 60% consumed domestically; 40% exported  
In 1985 85% consumed domestically; 15% exported

2.3 Rolled Steel Products - general industry  
Today 15% consumed domestically; 85% exported  
In 1985 90% consumed domestically; 10% exported

### **③. State of the steel industry**

3.1 In 1983 SA consumption of steel was 5 million tons; today it is 4 million tons

3.2 World steel production has fallen from 770 million tons to 715 million tons

3.3 Consumption of steel products has fallen in most countries which produce steel; so many countries are trying to export; so the export market is full and the prices are very low.

3.4 Drop in world production of steel means drop in consumption of ferro-alloys; SA produces a lot of ferro-alloys; Wadeville Metals produces castings for ferro-alloy industry; demand for these castings is down.

#### **4. State of the economy**

4.1 Deep recession over the last 3 years; no sign of recession ending; metal and engineering sector lost 30,000 jobs last year

4.3 Inflation rate 9.6% (down from 13%)

#### **5. Company results**

5.1 Profits increased in 1992 by 8% over 1991

5.2 Forecast profits for 1993 "far below" 1992 according to quotation from Managing Director quoted in the Business Day

#### **6. Ownership of company**

6.1 Wholly owned by Anglo American

#### **7. Manning levels**

7.1 Workforce has shrunk from 5,000 in 1990 to 4,000 in 1992

7.2 Company has achieved smaller workforce by not replacing retiring workers, extended leaves, short-times and a few retrenchments.

#### **8. Unionisation**

8.1 Your union has 2,250 members; this has remained static for the last 3 years; this is the biggest company by far in your Local

8.2 Membership is divided as follows:

Grade A (artisans)	100	
Grade B	850	
Grade C	<u>1300</u>	2250 total

8.3 You have 125 women members

8.4 A rival reactionary black union has 750 members; this has also remained static

8.5 Rest of the workers belong to white unions or to no unions at all

## 9. History of wage bargaining and worker action

9.1 1991 got increase 1% above inflation rate

9.2 1992 got increase 2% below inflation rate

9.3 In 1991 and 1992 held successful lunch-time demonstrations to support wage demands

9.4 In 1991 held one hour stoppages on two occasions to support wage demands

9.5 Conditions in the company are:

- \* 44 hour working week
- \* All production workers on 3 shift continuous production
- \* **Paid time off for shop stewards training:** none
- \* **Facilities for general meetings on company premises:** none
- \* **Literacy training:** company runs its own scheme
- \* **Maternity leave:** 3 months paid at 25% of basic pay
- \* **Pension/Provident Fund:** none
- \* **Medical Aid:** compulsory for Grade DDD and above; nothing below DDD
- \* **March 21 and June 16:** no agreement; company operates "No work, No pay"
- \* **Annual bonus:** 13<sup>th</sup> cheque up to 25% on basic based on merit
- \* **Annual leave:** 3 weeks paid
- \* **Compassionate leave:** 2 days unpaid per year
- \* **Paternity leave:** none
- \* **Short-time:** 800 workers currently on 4 days

9.6 Wages in the company are:

Grade A (artisans)	11.39
Grade B	6.69
Grade C	5.13

## 10. Management style

10.1 Liberal, 'enlightened' management

## HAND OUT

### INFORMATION FOR NEGOTIATIONS AND WHERE TO GET IT FROM

- |                                 |   |
|---------------------------------|---|
| <b>1. About the workplace</b>   | Shop stewards and workers   |
| <b>2. About the company</b>     | <ul style="list-style-type: none"><li>* Shop stewards and workers</li><li>* Look in the TURP book called "Wage Negotiations"</li></ul>  |
| <b>3. About the sector</b>      | <ul style="list-style-type: none"><li>* Trade magazines such as:<ul style="list-style-type: none"><li>Engineering News</li><li>Retailing News</li><li>Sugar Journal</li><li>Food Review</li></ul></li><li>You can find these magazines at Public Libraries, Service Organisations, libraries of Chambers of Commerce etc</li><li>* Service Organisations e.g. TURP (Tel: 031 816 2438)</li><li>* Newspapers/magazines e.g. Financial Mail, Finance Week etc</li></ul> |
| <b>4. Economy/inflation etc</b> | <ul style="list-style-type: none"><li>* TURP</li><li>* LRS (Tel: 021 471677)</li><li>* Central Statistical Services<ul style="list-style-type: none"><li>Private Bag X44</li><li>0001 Pretoria</li><li>Tel: 012 310 8911</li><li>Fax: 012 310 8500/1</li></ul></li><li>(There are also Local CSS offices in Bloemfontein, Durban, Cape Town, Kempton Park, Kimberley, Klerksdorp, Nelspruit, Pietersburg and Port Elizabeth).</li></ul>                               |



## **5. Industrial Council Agreements/ Wage Determinations**

- \* Your Union Head Office
- \* Public Libraries
- \* Law libraries at Universities
- \* Local legal services groups
- \* Department of Manpower Offices
- \* The Industrial Council for your industry

## **6. Subsistence Levels**

- \* LRS
- \* UNISA Bureau of Market Research  
P.O.Box 392  
0001 Pretoria  
Tel: 012 429 3566
- \* University of Port Elizabeth  
Institute for Planning Research  
P.O.Box 1600  
6000 Port Elizabeth  
Tel: 041 531 1336

## WHAT YOU DO

### ITEM THREE - PREPARATION FOR NEGOTIATIONS

*Time - 2 hours 55 minutes*

1. Use OHT 6 and 7 to explain the objectives of this exercise; then explain this entire item to the class as follows:
2. Give to the participants the Hand Out marked "Company Profile".
3. Break them into two groups - each group represents a separate department or shift in the factory; try to make sure that you do not have participants from the same union in the same group.
4. Tell the groups their tasks as follows:

- Read the Company Profile
- Prepare a mandate for wage negotiations with Wadeville Metals; they are allowed a set of demands which includes one wage demand plus three demands on conditions, so they must choose carefully.
- Each group must then elect two negotiators (one to be an organiser and the other to be a shop steward)

*Time allocated for this section is 40 minutes*

- At the end of the 40 minutes, the negotiators must take their mandates, go to another room and try to negotiate a common mandate for the two groups together.
- While these negotiations are proceeding, the rest of the groups can have a short break, but they must stay in their places in order not to waste time.

*Time allocated for this section is 15 minutes*

- At the end of the 15 minutes, the negotiators report back to their groups separately and get a fresh mandate; the fresh mandate must be flexible enough to allow their negotiators to arrive at a common mandate with the other group.
- They must elect two new negotiators per group (again 1 organiser and 1 shop steward) for this next round

*Time allocated for this section is 15 minutes*

- The new negotiators must meet to finalise a common mandate; this time the rest of the groups watch the negotiations.
- The facilitator must stop this negotiation after a maximum of 15 minutes, even if there is no agreement; if there is no agreement, the facilitator must impose an agreement.

*Time allocated for this section is 15 minutes*

5. Conduct a plenary discussion to review the process by which the negotiators reached an agreement. Use the questions in Checklist 1 to prompt the discussion. At the end of the discussion, summarise using the 'Summary Points' in Checklist 1.

*Time allocated for this section is 30 minutes*

6. Conduct a plenary discussion to compare the agreed demands with the company profile; use the questions in Checklist 2 to prompt the discussion. At the end of the discussion, summarise using the 'Summary Points' in Checklist 2.

*Time allocated for this section is 60 minutes*

- 7.. The groups must now quickly elect new negotiators (again 2 per group).

**ITEM THREE  
PREPARATION FOR NEGOTIATIONS  
OBJECTIVES**

Participants will learn how to:

1. Use information about a company
2. Negotiate a united, common mandate out of different positions
3. Renew a mandate after negotiations

Participants will also learn:

1. How it feels to be outside negotiations

## CHECKLIST 1

### 1. Question to Group

Did the negotiators stick to their mandate? Did they check back what their mandate was?

#### Summary point

Stress the absolute requirement to stick to your mandate.

### 2. Question to Group

Was the mandate flexible enough to allow negotiators to move in negotiations?

#### Summary Point

Stress the need to have a mandate which allows the negotiators some room to move; stress how useful it is to have prepared an opening position, a middle position and a bottom line position.

### 3. Question to Group

How did the constituency feel being left in the dark during the first negotiation?

#### Summary Point

Stress the need for full report back because workers feel left out while their negotiators are sitting with management. Workers often feel afraid that their negotiators may be selling them out while they are sitting with management.

### 4. Question to group

Were you satisfied with the way your negotiators brought the two positions together? Did they lose something which they did not need to lose?

#### Summary point

Stress the need to produce a strong, united mandate; mandates are always compromises between different positions in the constituencies; sometimes these different positions come because bargaining takes place at national level; sometimes it happens because there are different shifts in the factory which cannot all meet together.

It takes time to produce a united mandate; if you try to go too fast you will end up with a weak, divided mandate; management will see this in the negotiations.

Management may also have a divided mandate; this is why it is useful to test out management to try to divide them.

## CHECKLIST 2

### 1. Question to Group

Did the groups have a clear strategy behind their demands or were the demands chosen by chance? Did they take into account the company information? Did they need more information about the company, and if so what information?

#### Summary Point

Demands should be formulated as part of a plan; it is difficult because demands come from workers who think first (quite rightly) about what they need. Plans will change as the mood of the workers changes. So you need to plan again and again, not only once at the beginning.

You also need to take into account your Union's policies when you are negotiating.

### 2. Question to Group

- Put the following statement to the group and then allow discussion

*The role of the organiser is to persuade the workers to accept a realistic position taking into account the business position of the company*

- Then put this next statement to the group and allow discussion

*The role of the organiser is to listen to whatever the workers say, note it down and take it to management.*

- Then summarise the discussion including the following points:

- \* Workers' demands are always realistic; they reflect what the workers really need.

- \* Workers need information in order to be able to make good decisions; the job of the organiser is to give that information to the workers; they need guidance on strategy.

### 3. Question to Group

How does your own position as an organiser affect the way you advise workers (e.g. your political ideas, or your overload of work)?

#### Summary Points

- Some organisers always try to lead workers into strikes because they want to make a revolution and defeat capitalism.



- Some organisers always try to settle disputes without strikes because they are too busy to handle strikes (e.g. they are going to the COSATU Summer School and don't have time).
- You must be aware of your own interests as an organiser so that you can then stop those interests from interfering with the way you give leadership.

## WHAT YOU DO

### ITEM FOUR - TABLING THE DEMANDS

*Time - 1 hour*

1. Use OHT 8 and 9 to explain the objectives of this section.
2. Explain what will happen to the class as follows:
  - During this section the class will be divided
  - The 4 negotiators will sit in negotiations with management
  - The rest of the class will be divided into two groups to produce a strike plan; these two groups will then meet together to finalise a common plan; all of this will take place while the negotiators are sitting with management.

3. Tell the 4 negotiators to sit together, select who will be the organiser and who will be the 3 shop stewards; they can go away and do this while you are explaining to the rest of the class what is their task.

*Time allowed for this section is 5 minutes*

4. Divide the rest of the class into two groups
    - Both groups must spend 30 minutes producing a plan of action for a strike
    - After the 30 minutes, the two groups must come together and spend another 30 minutes finalising a common plan of action for the strike.

They must stick very strictly to the time allowed; they will not be allowed any extra.

*Time allowed for this section is 60 minutes*

5. When the negotiators have finished their 5 minutes preparation, the facilitators (playing management of Wadeville Metals) sit with them and conduct the first round of negotiations
    - A full brief for management is contained on the paper marked 'Instructions to Management - Round one of negotiations'
    - This negotiation must be video-taped for playing back later.

*Time allowed for this section is 45 minutes*

- 6. After negotiations finish, the negotiators must spend 15 minutes reparing their report backs to their constituencies.

*Time allowed for this section is 15 minutes.*

- 7. At the end of this process, bring the whole class back together again for the next item.

**ITEM FOUR  
TABLING DEMANDS  
OBJECTIVES**

Participants will learn how to:

1. Present workers' demands to management
2. Listen to and assess management's initial response
3. Reply to management's response
4. Take notes of a negotiation meeting

5. Avoid management dominating a meeting

6. Avoid some common mistakes in opening negotiations

## **INSTRUCTIONS TO UNION**

### **Round one of negotiations**

1. You are going to a meeting with the management of Wadeville Metals for annual negotiations on wages and conditions.
2. Use the demands agreed in the last session..
3. Organise your delegation to present your demands in the best way possible.

## INSTRUCTIONS TO MANAGEMENT

### Round One of Negotiations

1. Arrange a table and chairs so that one chair is at the head of the table
2. The facilitators will play the roles of management; there should be at least two on management side, the Managing Director (who will chair the meeting) and a consultant from 'Solve your labour problems' Management Consultants. If you can find a third person, s/he should play the role of Personnel Manager.
3. The Managing Director takes the seat at the head of the table and the Consultant sits at the side of the table next to him; during the meeting, the MD is polite and friendly and the Consultant is more rude and aggressive.

4. MD welcomes union delegation and informs them of the agenda which is:

- |   |
|---|
| <ol style="list-style-type: none"><li>1. Introduction by MD on the general state of the company</li><li>2. Introduction by Consultant on proposals by management</li><li>3. Presentation of union's proposals</li><li>4. Reply by management to union's proposals</li></ol> |
|---|

5. If the union objects to your proposed agenda, negotiate with them but be prepared to concede to a revised agenda as follows:

- |   |
|---|
| <ol style="list-style-type: none"><li>1. Presentation of union's proposals</li><li>2. Reply by management<ol style="list-style-type: none"><li>2.1 Outline of the state of the company</li><li>2.2 Management's proposals</li></ol></li><li>3. Reply by the union</li></ol> |
|---|

6. **Outline the state of the company:** when you present this item, emphasise the following from the detailed profile of the company:
  - The decline in the steel industry nationally and internationally
  - The state of the economy, the recession and widespread retrenchments
  - Bad forecast for business in 1993
  - The fact that many workers are on extended leaves and short-time
  - Up until now you have managed to restrict the number of retrenchments to very few

7. **Proposals by management:** your proposals to the union are as follows:

- Annual bonus: this must be cancelled since the company can no longer afford it
- March 21 and June 16: workers must swop these days for May 1 (May Day) and May 31 (Republic Day); they will therefore be paid on March 21 and June 16 and not paid for May 1 and May 31. **Do not explain this proposal any further unless you are specifically asked to do so by the union.** What the proposal means is that workers will not work on March 21 and June 16 but they will be paid; on May 1 and May 31 they will not work and they will not be paid.
- Maternity leave: propose removing provision for paid maternity leave; in future 3 months leave will be unpaid; UIF provision will be enough

8. **Union's proposals on wages:** whatever the union proposes, your counter-proposal is 5% across the board.

9. **Union's proposals on conditions:** whatever the union proposes, reject it.

10. During negotiations make sure you do the following:

- Attack the organiser for having his own agenda and not really representing the workers; do this until the shop stewards correct you.

Round 2:

~~Round 1~~

① Move to wages 7.5

TIME-OFF : 3 DAYS UNPAID  
MONTHS NOTICE  
PROGRAMME.

3 DAYS FOR  
M/M TO TRAIN  
S/S.

② 48 hours → STAFFS QND TO REMAIN  
P/F → FOR GRADE A COMPANY-FUND.

③ HOLIDAYS.



## **WHAT YOU DO**

### **ITEM FIVE - REPORTING BACK**

*Time - 15 minutes*

1. Divide the class back into their two groups.
2. the task of each group is to receive a report back from their negotiators
3. Instruct them to allow questions of clarity, but no debate at this point.
4. At the end of the 15 minutes, bring the class back together again.

*Time allowed for this section is 15 minutes*

## **WHAT YOU DO**

### **ITEM SIX - VIDEO OF NEGOTIATIONS**

***Time - 2 hours 30 minutes***

1. The whole class watches the video of the negotiations which have just finished.

***Time allowed for this section is 45 minutes***

2. At the end of the video, conduct a plenary discussion on the issue of how the video compares with the report backs which the groups received from their negotiators. Use the questions in Checklist 3 to prompt discussion. Use the Summary points to summarise the discussion.

***Time allowed for this section is 30 minutes***

3. Conduct a plenary discussion on how the negotiators conducted the negotiations. Use the questions in Checklist 4 to prompt discussion. Use the Summary points to summarise the discussion.

***Time allowed for this section is 45 minutes***

4. Take one report back in plenary from the large group which finalised a plan of action for the strike. Conduct a discussion on the report, using the questions in Checklist 5 to prompt discussion. Use the Summary points to summarise the discussion.

***Time allowed for this section is 30 minutes***

**ITEM SIX**  
**NEGOTIATIONS VIDEO**  
**OBJECTIVES**

Participants will learn how to:

1. Plan a strategy for negotiations—
2. Present and motivate a clear set of demands —
3. Reply to management's response—
4. Prepare and deliver a full and accurate report back

- Participants will also learn:

1. Some management tactics and how to deal with them
2. Some useful union tactics
3. The importance of listening carefully to what management says

## **CHECKLIST 3**

### **1. Question to Group**

Were there any points which were wrongly reported?

#### **Summary Points**

- Need to take accurate notes; if you are confused or you are falling behind as management is speaking, do not be afraid to ask management for clarity. Sometimes it can be a good idea to have a 'division of labour' amongst the negotiating team e.g. give one comrade the task of taking notes.
- Try dividing your paper when you are taking notes; write on the left side your notes of what management and the union are saying; write on the right side your comments; this will help you to know what you want to say next after management has finished.

### **2. Question to Group**

Did the report backs gve you a full picture of what took place in the negotiation? Did the report back allow you to "feel" management or was it just dry facts?

#### **Summary Point**

Workers need to know the attitude of management, not just the facts of what they say. This stops them from feeling excluded from the negotiation process. It also helps them to make good decisions.

### **3. Question to Group**

Did the report back correctly reflect attitudes in the negotiations or did it try to mediate between management and the workers?

#### **Summary Point**

Your job as an organiser is not to mediate between management and workers; it is to provide an accurate reflection of what took place.

#### **4. Question to Group**

Did the report back give only facts of what management said, or did it give an analysis/understanding of those facts

#### **Summary Point**

Report backs need to analyse management's position for workers; it is not enough just to be a "postman" bringing back messages.

#### **5. Question to Group**

Did the report backs try to build up the image of the negotiators to seem very harsh with management in order to satisfy the workers?

#### **Summary Point**

Avoid using negotiations to build yourself as an organiser in order to be popular. Workers need the truth in order to make good decisions.

## CHECKLIST 4

### 1. Question to Group

Seating arrangements: did the union allow the MD to sit at the head of the table? Where did the organiser sit?

#### Summary Points

- Raise the question of the additional power it gives for the MD to sit at the top of the table; it gives the impression of neutrality of the Chair.
- Also raise the point that if you are on time for meetings you can often choose where to sit; later, once management is already sitting down, it is more difficult.
- Also raise the point that it is useful for the organiser to sit in the middle of the shop stewards; this allows discussion with the shop stewards during the meeting.

### 2. Question to Group

The agenda: did the union fight to re-organise the agenda?

#### Summary Point

Management often tries to take over and dominate negotiations; this weakens the union's position. It is therefore important to fight over things like the agenda.

### 3. Question to Group

Translation: did the union request a translator?

#### Summary Point

Raise the importance of translation for shop stewards to understand what management is saying. Also raise the advantage it gives to have a translator - it gives you time to think and to make notes.

Also raise the debate about who should translate; some say give the job to management because the union does not have the resources; others say use the union because the management translator will distort things.

#### **4. Question to Group**

Company profits: did the union use the information on good company profits from the company profile?

#### **Summary Point**

Stress how important it is to use all the information you have to strengthen your case.

#### **5. Question to Group**

Listening and checking back: did the union hear and respond to what the management was saying? Look for examples where the union misunderstood management.

#### **Summary Point**

If you misunderstand by accident what management is saying it can lead to long debates which are useless to your members. Get management to clarify if you are not sure you have understood. If necessary, say back to them what you think they said in order to make sure you have understood correctly. Of course, you can misunderstand management on purpose and sometimes this can be a useful tactic.

#### **6. Question to Group**

The MD and the Consultant: how did the union respond to the different attitudes of the MD and the Management? Did they try to divide them?

#### **Summary Point**

Point out that it can be an important tactic to look for divisions on the other side and exploit them to your advantage.

#### **7. Question to Group**

Clarity of proposal: was the proposal presented and motivated clearly?

#### **Summary Point**

Discuss how useless it is for the members if their negotiators have long debates with management over simple misunderstandings.



### **8. Question to Group**

Looking for information: did the union look for any more information from management than what management offered? Did they ask for evidence of management's statements on the industry and the company?

#### **Summary Point**

Stress the importance of using negotiations to get information from the company.

### **9. Question to Group**

Attitude of union: was the union unproductively aggressive or too passive?

#### **Summary Point**

Stress the importance of making sure that what you do always has a purpose and a goal.

### **10. Question to Group**

Union's strategy: how did the union's strategy work out in practice? Were they adequately prepared? Did they prepare an approach (e.g. hard line or soft line)?

#### **Summary Point**

- Stress the importance of thorough preparation.
- Stress the need to have an agreed approach; you can even have some of the team taking a hard line and others taking a soft line.

## **11. Question to Group**

What was the relationship between the organiser and the shop stewards?

### **Summary points**

Common errors are:

- Organiser dominates shop stewards and doesn't allow them to speak; remember your job is to educate shop stewards and build organisation; you will not be in the factory tomorrow; they will be.
- Organiser gets on better with management than the shop stewards do; s/he speaks better English and the management prefers to talk to him/her; organisers sometimes co-operate with this.
- Organisers sometimes try to impress the shop stewards by being very harsh with management; sometimes this is not a correct reflection of the attitude of the workers; it can be fun but it doesn't always achieve anything.

## **12. Question to Group**

Attention to detail: did the union pick up on the meaning of management's proposal on March 21 and June 16?

### **Summary Point**

Management will slip in things which favour them unless you pay attention to understanding the detail and implications of their proposals.

## CHECKLIST 5 ✓

Allow a free discussion on what the group produces. At the end, make sure that the following points are covered:

**1. Solidarity from other workers:** note that this is an Anglo company; make sure that the plan involves Anglo workers from other companies.

**2. Solidarity from the community/political organisations:** make sure that the plan makes concrete requests to the community; letters of support do not win strikes (e.g. Anglo owns First National Bank; the community could picket the branches of FNB).

**3. Solidarity from the union:** make sure the plan includes other workers in the Local and Region/Branch.

**4. Regular General Meetings:** it is easy to lose unity in a strike if you do not meet regularly with the workers; general meetings need to be interesting events, not just report backs; look at the possibility of involving cultural groups etc.

**5. Scabs:** make sure there is a plan to deal with scabs.

**6. Workers in the other unions in the plant:** make sure the plan includes an attempt to win other unions to the strike.

**7. Publicity:** make sure the plan includes contacting newspapers, radio etc; also make sure there is a plan to produce pamphlets and posters.

**8. Strike ballot:** make sure that plan includes preparation for strike ballot (boxes, ballot papers, ballot facilities etc)

## WHAT YOU DO

### ITEM SEVEN - PREPARE FRESH MANDATE

*Time - 20 minutes*

1. The whole class sitting together must prepare a fresh mandate for the next round of negotiations.
2. The class must elect 4 new negotiators for the next round of negotiations (one of them must be the organiser and the other 3 must be shop stewards).
3. The facilitators go to another room and prepare themselves to play management in the next round of negotiations (using 'Instructions to Management - Round Two of negotiations').
4. At the end of the 20 minutes, bring the whole class together again.

*Time allowed for this section is 20 minutes*



## **ITEMS SEVEN AND NINE FRESH MANDATE OBJECTIVES**

Participants will learn how to:

1. Assess management's position
2. Plan a fresh mandate

## **INSTRUCTIONS TO UNION**

### **Round Two of Negotiations**

1. Take note of the report back you received from the first round of negotiations.
2. Give a fresh mandate to your negotiators for the second round of negotiations
3. Elect 4 new negotiators (1 organiser and 3 shop stewards)

## INSTRUCTION TO MANAGEMENT

### Round Two of Negotiations

1. Play the same roles as before (i.e. the soft MD and the hard Consultant)
2. The agenda is only one item - Annual Wage Negotiations
3. **Conditions:** be prepared to trade off management's original proposals for concessions on conditions from the union.
4. **Wages:** after pushing the union for a while, make the following offer:

- Grade A        7.5%
- Grade B        47 cents
- Grade C        33 cents

\*Take note that this offer is a bigger percentage for Grade A (7.5%), a smaller offer for Grade B (7%) and the smallest offer for Grade C (6.5%). **Do not** tell the union this. The union may challenge you on this if they are good at calculations.

5. If the union has a caucus after your offer, be prepared to move to the following:

- Grade A        8%
- Grade B        50 cents
- Grade C        35 cents

Note - the offer for Grade A (8%) is still bigger than the offer for Grade B (7.5%) and for Grade C (6.8%); again, **do not** tell the union this.

Make it clear that this is your **bottom line**.

6. When you fail to reach agreement, make it clear that you are prepared to have one more round of negotiations; threaten to refuse to backdate the agreement if there is no agreement at the next round of negotiations.
7. Make sure that during negotiations you do the following:
  - Persistently interrupt union speakers; do this until they correct you; then stop.
  - Make speeches about irrelevant things (e.g. the general political situation; COSATU ruining the economy with stayaways, tax wars etc); do this until they correct you; then stop.

## WHAT YOU DO

### ITEM EIGHT - ROUND TWO OF NEGOTIATIONS

*Time - 1 hour 45 minutes*

1. Use OHT 13 to explain objectives
2. Conduct Round Two of negotiations in front of the whole class (the facilitators playing management)
3. Instruct the class to take notes during the negotiations for the discussion afterwards.

*Time allowed for this section is 60 minutes*

4. Conduct a plenary discussion on the process of this negotiation. Use the questions in Checklist 6 to prompt discussion. Use the Summary points to summarise the discussion.

*Time allowed for this section is 45 minutes*



**ITEM EIGHT  
NEGOTIATIONS  
OBJECTVES**

Participants will learn how to:

1. Move from opening position towards bottom line
2. Motivate new positions

Participants will also learn:

1. Some management tactics and how to deal with them
2. Some useful union tactics

## CHECKLIST 6 ✓

**Note - the first three questions are repeated from Checklist 4**

### 1. Question to Group

Listening: did the union hear and respond to what the management was saying? Look for examples where the union misunderstood management.

#### Summary Point

If you misunderstand by accident what management is saying it can lead to long debates which are useless to your members. Get management to clarify if you are not sure you have understood. Of course, you can misunderstand management on purpose and sometimes this can be a useful tactic.

### 2. Question to Group

Attitude of union: was the union unproductively aggressive or too passive?

#### Summary Point

Stress the importance of making sure that what you do always has a purpose and a goal.

### 3. Question to Group

Union's strategy: how did the union's strategy work out in practice? Were they adequately prepared?

#### Summary Point

Stress the importance of thorough preparation

### 4. Question to Group

Mandate: How did the union manage their mandate? Did they go too fast to their bottom line? Or did they delay too long?

#### Summary Point

Importance of timing in negotiations; if you go too fast to your bottom line you will be pushed below it; if you go too slowly you may deadlock when you don't want to.

## **5. Question to group**

Use of caucus: did the union call for a caucus when the management tabled a complicated counter-proposal which they needed time to calculate?

### **Summary Point**

Don't be afraid to ask for caucus time when you need it; if you allow management to take you too fast you will find that you have agreed to something which is outside your mandate and you didn't even realise it.

## **6. Question to Group**

Management interruptions: Did the union deal with management properly when they persistently interrupted the union speakers?

### **Summary Point**

Do not allow management to dominate; force them to stick to agreed procedures.

## **7. Question to Group**

Irrelevant speeches: Did the union stop management from introducing long, irrelevant speeches?

### **Summary Point**

This is another way in which management tries to dominate meetings; it is important to stop them.

## **8. Question to Group**

Equipment: did the negotiators have all the equipment they needed

### **Summary Point**

Stress things like calculators, minutes of previous meetings, current agreements with the company etc.

## **9. Question to Group**

What was the relationship between the organiser and the shop stewards? Did the organiser dominate

### **Summary Point**

A common error is for organisers to dominate; often it is because they have not made enough time to prepare properly with the shop stewards; allocate adequate preparation time; remember your job is to educate and train shop stewards because they are the ones who spend all their time in the workplace.

## **WHAT YOU DO**

### **ITEM NINE - REPORT BACK AND FRESH MANDATE**

*Time - 30 minutes*

1. Use OHT 12 to explain objectives
2. Tell the class to use 'Instructions to Union - Round Three of Negotiations' as their brief.
3. The class as one group must prepare a fresh mandate and elect new negotiators as before.
4. While the class is preparing its mandate, the facilitators sit in another room and prepare using 'Instructions to Management - Round Three of Negotiations'.

*Time allowed for this section is 30 minutes*

## **INSTRUCTIONS TO UNION**

### **Round Three of Negotiations**

1. You have held a general meeting in the factory since the second negotiating meeting; the message from your members was that they are not prepared to strike because they are too afraid of retrenchments.
2. You are worried that there were impingements from the company in the meeting so that management knows your mandate.
3. Mandate your negotiators so that they are able to reach agreement at the third meeting

## **INSTRUCTIONS TO MANAGEMENT**

### **Round Three of Negotiations**

1. You have heard from your impimpis that the workers are not prepared to strike, so your position is strong.
2. On wages: be prepared to settle for 8% for all grades.
3. On conditions: give the union something, but not everything that they demand.
4. If the union refuses to conclude an agreement on the basis that they have to consult their constituency, insist that you at least sign an agreed record of the meeting.

**WHAT YOU DO**  
**ITEM 10 - REACHING AGREEMENT**

*Time - 45 minutes*

1. Use OHT 14 to explain objectives
2. Conduct the final round of negotiations with facilitators playing management.
3. Whole class to watch the negotiations and take notes for the discussion.

*Time allowed for this section is 45 minutes*



**ITEMS TEN TO TWELVE  
AGREEMENTS  
OBJECTIVES**

Participants will learn how to:

1. Conclude a tight agreement
2. Draft a tight agreement

Participants will also learn:

1. Key points for a tight agreement
2. Some management tactics and how to deal with them
3. Some useful union tactics

## **WHAT YOU DO**

### **ITEM 11 - DRAFTING AGREEMENT**

*Time - 40 minutes*

1. Break the class back into two groups.
2. Each group to produce a full draft, on flip chart paper, of the agreement concluded in the negotiations - refer the class to the 'Instructions to Union - Drafting Agreement' in the Participants Workbook.
3. While the class is drafting their version of the agreement, the facilitators (as management) will also draft management's version of the agreement. Do this draft on flip chart paper. Use 'Instructions to Management - Drafting the Agreement' as a guide.
4. At the end of the 40 minutes, bring the class together again.

*Time allowed for this section is 40 minutes*

**INSTRUCTIONS TO UNION**  
**Drafting Agreement**

1. Listen to the report back from your negotiators
2. Draft a full agreement, including all the relevant points, which you are prepared to sign.

## INSTRUCTIONS TO MANAGEMENT

### Drafting Agreement ✓

1. Draft a full agreement.
2. Try to slip in some points which are favourable to management; some examples could be:
  - Change the implementation date
  - Put in a provision that the agreement will only be valid if it is signed by a certain date
  - Use the word "minimum" before the agreed wage increase (e.g. a minimum of 8%).  
(Note - this allows management to pay more than the agreed rate, which could be useful to them if they want to buy off a strike next year).

## **WHAT YOU DO**

### **ITEM 12 - PRESENTING AGREEMENTS**

*Time - 1 hour 45 minutes*

1. Both groups must present their drafts to the class, one after the other.
2. No questions or comments at this stage.
3. One facilitator to present management's draft to the class, again without questions or comment.
4. Ask participants to talk for 3 minutes to the comrade sitting next to them about any differences they can spot between the three drafts.

*Time for this section is 45 minutes*

5. Conduct a plenary discussion on the differences between the agreements and how to avoid this problem. Use the questions in Checklist 7 to prompt discussion. Use the Summary points to summarise the discussion.

*Time for this section is 45 minutes*

6. Conduct a plenary discussion on the process of the final negotiation. Use the question in Checklist 8 to prompt discussion. Use the Summary points to summarise the discussion.

*Time for this section is 30 minutes*

## CHECKLIST 7 ✓

### 1. Question for Group

What are the differences between the 3 versions of the agreement?

#### Summary Point

Stress the danger of leaving the final negotiation without a clear agreement.

### 2. Question for Group

Is there anything missing from the agreements?

#### Summary Point

The following are general points that must be present in an agreement:

- Date of implementation
- Who is responsible for implementation
- Wording must be precise, not vague
- How will the agreement be implemented in respect of newly recruited workers
- What will be the effect of the agreement on short-time workers

The following are points related to specific issues:

- **13th cheque:** will it be payable at the new rate for the full year? Do you get a pro rata payment if you leave the company before the end of the year?
- **Shop stewards training:** is the time allocated for the period of the agreement or for a calendar year? (Remember most union's training programmes are drawn up for a calendar year)
- **General Meetings:** how often will they be allowed? where on the company's premises? During working time or not?
- **Medical Aid/Pension and Provident Funds:** What are the company's contributions and what are the workers' contributions?
- **Pension/Provident Fund:** Who will control the Fund?
- **Paternity Leave:** what proof of paternity is required; for how many wives will it apply?
- **March 21/June 16:** what happens when they fall on a week-end in a trade off for other national holidays?
- **Wages:** did they include the old and new rates or only the increase; if you don't put in the old and new rates it can lead to arguments about interpretation later.

### **3. Question for Group**

How can you avoid a lack of clarity at the end of negotiations?

#### **Summary Points**

The following are some choices:

- Sign a complete record
- Draft the agreement and sign it in the meeting
- Caucus and both sides produce a draft for signing in the meeting
- Call another meeting for checking and signing an agreement

**Do not:** allow management to draft the agreement alone.

### **4. Question to Group**

Can a vague agreement sometimes be useful

#### **Summary Point**

A vague agreement can only be useful if you think that the balance of forces will change in your favour in the future (within the lifetime of the agreement; an example can be if the workers are now tired of action but you think they will recover in a couple of months.

## CHECKLIST 8

Note - the first four questions are repeated from Checklist 6

### 1. Question to Group

Listening: did the union hear and respond to what the management was saying? Look for examples where the union misunderstood management.

#### Summary Point

If you misunderstand by accident what management is saying it can lead to long debates which are useless to your members. Get management to clarify if you are not sure you have understood. Of course, you can misunderstand management on purpose and sometimes this can be a useful tactic.

### 2. Question to Group

Attitude of union: was the union unproductively aggressive or too passive?

#### Summary Point

Stress the importance of making sure that what you do always has a purpose and a goal.

### 3. Question to Group

Union's strategy: how did the union's strategy work out in practice? Were they adequately prepared?

#### Summary Point

Stress the importance of thorough preparation

### 4. Question to Group

Mandate: How did the union manage their mandate? Did they go too fast to their bottom line? Or did they delay too long?

#### Summary Point

Importance of timing in negotiations; if you go too fast to your bottom line you will be pushed below it; if you go too slowly you may deadlock when you don't want to.



### **5. Question to Group**

Tight agreement: Did the negotiators conclude a tight agreement or were there pieces left vague?

#### **Summary Point**

Stress the need for tight agreements unless you have a strategy of leaving things vague in order to have room to fight later.

### **6. Question to Group**

What do you do if, after failure to reach agreement, management rings the organiser in the office and tries to "talk things over" on the phone or asks for a private meeting

#### **Summary Points**

- Never meet management without the presence of shop stewards
- Be very careful about what you say on the phone; if you do talk on the phone, immediately inform the shop stewards about the conversation.

### **7. Question to Group**

What do you do, as an organiser, if the workers/shop stewards want to settle but you think that the terms are too bad to accept?

#### **Summary Point**

In the end, you cannot allow your 'pride' to stand in the way of an agreement which the workers want. However, if you think that the proposed agreement is against the policies of the union you can take the issue to the union's structures.

## WHAT YOU DO

### ITEM 13 - SUMMARY

1. Let the participants 'buzz' by talking to the one next to them for 3 minutes; they should discuss the question:

*"What are the main points that we have learned from Days Two and Three?"*

2. Listen to the report backs from the buzzing and note the points on a flip chart; make the notes under separate headings as follows:

- Information
- Skills
- Strategies and tactics

3. Add to their list as you think appropriate

## **DAY FOUR: POWER IN NEGOTIATIONS**

### **OBJECTIVES**

- 1. To develop an understanding of the role of POWER in negotiations**
- 2. To develop skills in assessing the POWER of negotiating parties and how and when to use POWER**

**OHP 15**

## Day Four: Power in Negotiations

Time	Item	Materials
8h30	<b>Power in Negotiations</b>	
	Discussion/debate	see facilitators notes (p86) flip chart 04/16
9h00	<b>Sources and Usage of Power</b>	
9h15	a) Introduction by Facilitators b) Brainstorm - 2 groups * union sources * management sources	Facilitators notes (p87)
10h15	<b>TEA</b>	
10h30	<b>Assessing Power</b>	
	Using sources - develop key questions	see facilitators notes (p90) worksheets
11h30	<b>Analysing Risks in using power i.e. strike</b>	
	Pairs - draw up * costs to union * costs to companies Exercise	facilitators notes (p92) worksheets
13h00	<b>LUNCH</b>	
14h00	<b>Using Power</b>	
	Group Analysis Case studies Report and Discussion	facilitators notes (p94) case studies
15h15	<b>TEA</b>	
15H30	<b>Summary of Course lessons</b>	Ponder sheet
16h00	<b>Evaluation of the whole course</b>	
	Check expectations Use Ballot method of evaluation	see facilitators notes (p )

## **DAY FOUR - POWER IN NEGOTIATING**

### **SOURCES AND USAGE**

#### **THE ROLE OF POWER IN NEGOTIATIONS**

This is an introductory activity and must be brief. The aim is to focus the participants attention on the central role of power in negotiations.

##### **1. Controversial Statement**

OHT containing the following statement to be shown to participants.

**THE KEY TO SUCCESSFUL NEGOTIATION IS  
CONSENSUS AND COMPROMISE.**

**WITH THIS APPROACH, THE NECESSITY TO USE  
POWER FALLS AWAY.**

##### **2. Question to Participants**

**DO YOU AGREE WITH THIS STATEMENT?**

**MOTIVATE YOUR ANSWER.**

##### **3. Prepare**

In pairs participants to "buzz" their response.

##### **4. Discuss**

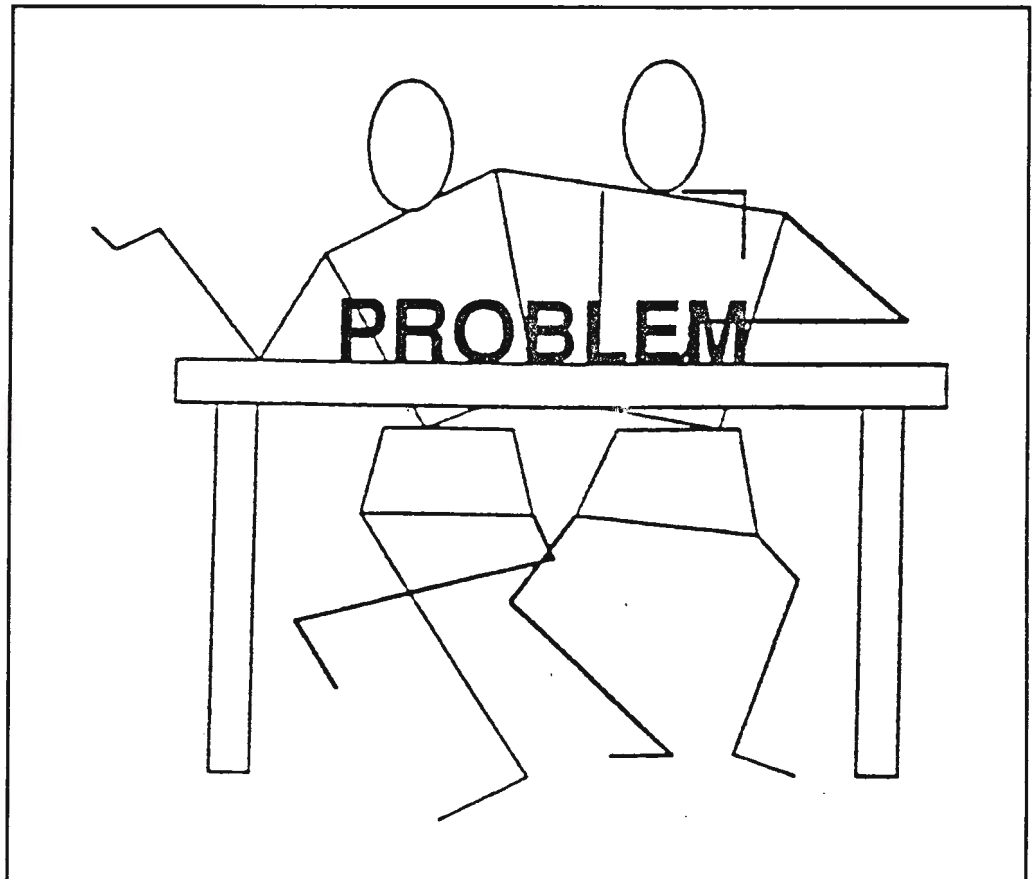
In plenary various responses are given by participants and discussed.

##### **5. Summary**

Facilitator summarises - although many elements are important in negotiations, power has the central role to play. (Hopefully participants will come to this conclusion)

- **debate**

**The key to successful negotiation  
is consensus and compromise**



**With this approach ,  
the necessity to use power  
falls away**

## SOURCES AND USAGE OF POWER

### 1. Introduction by facilitator

In order to understand the balance of power and to assess when and how to use power, it is important to understand where the sources of power of self and opponent lie.

#### Analyse the sources of power

- \* trade union
- \* employer

Once the sources of power are understood, we can then identify gaps in our knowledge of our power and their power.

#### Assess the balance of power - ask key questions which build knowledge and ability to assess the balance of power at any one time

- \* trade union
- \* employer

During negotiations different sources of power may become more important and/or the balance of power may shift.

#### Reassess the balance of power - check out your key questions

In any situation we may need to directly use our power - that is by using industrial action

#### Do a risk analysis - to help you make a decision/advise your members as to whether to use industrial action and what form of industrial action

In this session we will go into detail of the above steps to build up tools of analysis to assist in making judgements around the balance of power and the usage of power.

## SOURCES OF POWER

1. Break the participants into two groups, providing each with a piece of paper and koki
- \* Group One to brainstorm what are the unions sources of power
- \* Group Two to brainstorm managements' sources of power
2. Each group to appoint a person to record and report back
3. Report back to whole group. Discussion
4. Facilitator to summarise, using check-list.



## **Facilitators' Checklist**

### **Union sources of power**

- \* levels of organisation
- \* structures (factory, local, union, Federation)
- \* militancy
- \* mobilisation
- \* education
- \* meetings
- \* mandates
- \* unity
- \* solidarity
- \* strikes
- \* propaganda
- \* moral highground
- \* law
- \* knowledge of the other side
- \* support from progressive organisations

### **Management sources of power**

- \* ownership
- \* money
- \* skills
- \* authoritarian structure
- \* knowledge about company
- \* control over production/workers
- \* political power
- \* law
- \* facilities
- \* propaganda/media control
- \* industry co-operation
- \* spying - information networks
- \* unemployment
- \* timing
- \* lock-out
- \* security forces

## ASSESSING POWER

1. Break into two groups.
2. Facilitator to provide a handout with headings on sources of power. Groups to have paper and koki. Groups to elect a person to record and report-back.

Using the sources of power as a reference point, identify the key questions to ask which will enable us to assess the balance of power :

- \* Group One : Unions
- \* Group Two : Management

3. Group report-back and discussion.
4. Facilitator to summarise, using check-list

### Facilitator's checklist :

#### Union :

- \* Membership
  - level of mobilisation
  - militancy
  - skills levels involved
  - unity
  - shop stewards reflecting members' feelings?
- \* Propaganda
  - machinery
  - angle on the company
- \* Industrial Action
  - ability?
  - what form?
  - solidarity
  - scabbing
- \* Economy
  - assessing general economic situation
  - situation in particular sector
- \* Union Capacity
  - financial
- \* staffing
- \* skills
- \* efficiency
- \* networks

## Management :

- \* Company Structure/Ownership
  - who makes the decisions?
- \* Management Relationships
  - divisions?
- \* History of Industrial Relations
- \* Management Level of skills
- \* Production methods
  - type?
  - start-up/closing times
  - vulnerable points
  - ability to switch production elsewhere
- \* Vulnerability to Industrial Action
- \* Competitors/Market share

## **RISK ANALYSIS**

### **1. Introductory remarks**

**Should we take industrial action?**

**What kind of industrial action?**

Prior to negotiations and throughout the negotiations the team will have constantly assessed and re assessed the balance of power and used this effectively during the negotiations.

The deadlock finally arrives. Management's final offer is on the table. The union negotiating team has to assist the membership in deciding whether or not to take industrial action.

At this stage many factors come into play - often factors that no amount of rationalisation or analysis will affect. However, as a negotiating team or executive you have a duty to know the risks you are taking and the possible outcome of any industrial action.

Having reassessed the balance of power at this stage, looking at the risks to both parties of not settling provides one tool of analysis that may assist in your giving sound advice to membership.

This is called a RISK ANALYSIS. Management's are taught this in their training around wage bargaining. They are analysing you!

### **2. Exercise**

- a. Give participants the following senario:  
Management tabled its "final offer" in a wage negotiation.  
Union has tabled its "final position"  
Union has to decide whether or not to accept managements offer or push ahead to dispute and possible action. If action what kind of action.
- b. Divide the participants into two sections. One section will investigate the union and one will investigate management.

In pairs the participants draw up possible

- \* Risks to union of not accepting the offer
- \* Risks of accepting the offer
  
- \* Risks to management of sticking to position
- \* Risks of accepting union position

(see worksheet)

- c. Write up some of the answers.

Some examples are below:

**Union:**

**Risks of not accepting**

- \* Will need to strike
- \* Membership may not fully support
- \* Management will divide membership
- \* Strike may take a long time
- \* Management may dig in heels
- \* Workers may go behind back of union
- \* Workers may become divided
- \* Workers may become demoralised
- \* Workers may be dismissed

**Risks of accepting**

- \* Workers lose faith in unions ability to deliver the goods
- \* Only some workers will be satisfied -others may resign from union
- \* Management will see the weak organisation of the union/plant

**Management**

**Risks of sticking to position**

- \* workers will strike
- \* workers will implement an overtime ban when critical orders
- \* lose orders
- \* cannot keep production going
- \* demoralise supervisory and managerial staff
- \* union will give bad publicity
- \* will result in legal battle
- \* costs of strike more than costs of union demand

**Risks of conceding**

- \* management will lose authority/discipline in eyes of workers
- \* management will lose face with shop stewards/union
- \* costs incurred will have to be passed onto customer
- \* costs will mean losing market share

## USE OF POWER

### Introduction

In the end whether to use direct power, how to use power, in what form will depend on your judgement, judgement of shop stewards/leadership, perceptions of membership, militancy of membership, political/economic climate, quality of leadership etc.

### Exercise

1. **Aim:** to analyse some typical examples of the use of power and highlight problems of judgement
2. **Task:** Divide participants into three groups. Each group is to read one case study and answer the following questions:
  - 1 What mistakes do you think the union made?
  - 2 How would you have handled the situation?

# Case Study One

An organiser and four shop stewards were negotiating wages and working conditions at T & G Transport. The company has a contract to transport bottles from a glass company to various beverage producers. It is a privately owned company employing 50 drivers and 20 assistants. This was the first substantive negotiation between the union and the company. The Union had submitted its proposal in advance to the company.

During the first negotiating meeting the company chief spokesperson, Mr.Coetzee, refused to make any offer. He told the union, very rudely, that it must go away and revise the proposal as the proposal was totally unrealistic in the present economic climate. The union was wasting the company's time with such a ridiculous proposal.

The union organiser tried hard to convince the management to give an offer. Eventually, the organiser got furious. He shouted at Mr.Coetzee and told him he was a racist pig who oppressed and exploited workers whilst living in a big luxury house with a swimming pool and servants. He told him that the company was making huge profits - it delivered beer bottles to SAB and alcholics like Mr.Coetzee made sure that there was an endless need for beer bottles.

After this the organiser called a caucus. He told the shop stewards that the best way to proceed was to declare a dispute and then strike. He told them that this was the only way to deal with pigs like Coetzee. The shop stewards agreed. The caucus took five minutes.

Back at the negotiating table the organiser delivered a speech about the oppression of black workers in South Africa and how things would change for Mr.Coetzee very shortly when the workers took over. He told him that the workers of T & G Transport were ready to strike and that the company would see something soon.

The union negotiating team marched out of the meeting led by the organiser.

A general meeting had been arranged for later that afternoon.

The organiser reported about the meeting and that it was now time to plan the strike. He asked the workers whether they were ready. Three workers gave long speeches in support. The meeting closed.

The next day shop stewards phoned the organiser. They said that there was a problem. Many workers had come to them and said they wanted to know what management was going to offer them. They did not feel that they could strike. Only last month management had retrenched 20 workers and even now many workers were hanging around in the canteen because not all the trucks were going out.

## **Points to draw out**

- \* Use of empty threats**
- \* How to deal with threats and anger**
- \* Poor analysis of power**
  - situation of company**
  - militancy and unity of workers**
- \* Importance of giving leadership**
- \* Importance of listening carefully to all**
- \* Being sure of mandate**
- \* Proper consideration of situation**
- \* How to use anger to increase power**

### **Reference material :**

**Imssa** - dealing constructively with anger  
dealing with threats



# Case Study Two

Alcor is an Engineering Company producing CV Joints. Its major customer, which normally buys about 75% of Alcor's products announced in December 1991 via the Media that it will be closing down in July 1992 due to economic reasons.

Consequently, demands for Alcor products dropped tremendously. Alcor declared that this necessitated short time. The Company also informed the union that it envisaged retrenchments.

In January 1992 the company and the union entered negotiations at plant level on wage increases. The Union refused the company's offer, declared a dispute, and its members went on strike in March 1992.

Whilst the workers were on strike, the company called the union in to discuss retrenchments. The proposed retrenchments affected more than half of its members. The company did not move from its original offer during the course of the strike. The workers were now demoralised and the union had to call off the strike, having gained nothing. Instead of a wage increase the union had to negotiate retrenchments.

## POINTS TO DRAW OUT

- \* Worker power must be assessed carefully in the light of the company position - militancy not necessarily power
- \* Proper assessment of the company position must be done
- \* When indications of a serious economic situation, are present, this must be looked at carefully and taken into account. What weakens management can also weaken workers in a fight
- \* Analyse carefully threats to retrench - is it a threat or a possible reality?

# Case Study Three

An organiser and shop stewards are negotiating the annual wage increase at Best Bread. The wage increase was due on 1st March 1992 and it is now half way through May 1992.

There have been many meetings, with both workers and management moving on their original demands.. The two positions are, however, still far apart, and it doesn't look as though there will be a resolution soon.

At the last meeting, management said that as far as they were concerned, the reason for the many meetings was that the Union was being irresponsible and making impossible demands. Management was negotiating in good faith and had moved many times. As a result, the company was not prepared to backdate the wage increase to 1st March, but would only implement it when an agreement was signed.

The negotiations drag on and on. Finally at the end of July an agreement is reached. Management has been very stubborn, and they have also produced financial statements which show that the company is not doing well. The Union representatives accept a wage increase which is only half a percent higher than the offer which management was making in May.

Management keeps to its word and only starts paying the new wages on the 1st August. Workers have lost much more in wages by waiting until August for their increase than they would have if the Union reps had accepted the offer which management made in May.

## POINTS TO DRAW OUT

- \* Timing in negotiations is crucial - dragging out a negotiation can kill it
- \* Management often refuses to back date. This gives management power. Judge if you can crack this. If not delays in settlement are dangerous
- \* Your power in the plant can be weakened for a long time with refusal to back pay.
- \* Check very carefully financial information of the company. If accurate delays will increase Management's power and weaken the power of workers

## **FACILITATORS SUMMARY**

### **Some points on assessing and using power**

- \* Make sure that your assessments are honest assessments  
(militancy of workers does not necessarily mean that you are in a position of power)
- \* Try not to overestimate your power - a very common mistake of negotiators.
- \* Constantly reassess the balance of power and changes in trade union or management power
- \* Do not rely on one source of power - use various sources together
- \* Power must be seen - if the other side does not know/fear your power then it will not assist you
- \* Beware of making unrealisable threats